[TRANSLATION]

Ladefoged Niels *et al* (*Plaintiffs*) and **The "SS Joseph H"** (*Defendant*) and **National Harbours Board** (*Opposing Party*) and **Ametco Shipping Inc.** (*Intervenor*)

Present: Noël J., in Admiralty—Quebec, November 26, 1969, Ottawa, March 28, 1970.

Shipping—Seaman—Wages—Salary—Victualling costs—Lodging expenses—Maritime lien—Mortgage on vessel—Priority of claims—Judgment by default—Intervention in the action—Power of the Court to re-examine judgment by default—Code of Civil Procedure, art. 208—Admiralty Rules, Rules 73A(5), 215—Rules of the Supreme Court of England, Order 75, r. 17—Discharge of a seaman—Canada Shipping Act, R.S.C. 1952, c. 29, s. 207.

By a judgment of the Court, the ship *Joseph H* was condemned by default to pay the plaintiffs (members of the crew) certain sums which they claimed, in large part, as salary or wages, and for accommodation and meal expenditures which they had incurred during their stay in Quebec City because there was no heat on the ship and the refrigeration system had broken down. Subsequent to that judgment, but before the sale of the ship, the Court allowed Ametco Shipping Inc., which claimed to be the vessel's first mortgagee, to intervene in the action. The intervention was contested by the plaintiffs on the ground, among others, that this procedure is allowed under articles 208 *et seq.* of the *Code of Civil Procedure* only before judgment.

Held: In the absence of appropriate rules of the Exchequer Court of Canada on its Admiralty side respecting intervention, a party may, pursuant to Rule 215 of the *Admiralty Rules*, refer to English procedure. Order 75, r. 17 of the Rules of the Supreme Court of England contains a procedure allowing intervention even after judgment since, contrary to art. 208 of the *Code of Civil Procedure*, this rule does not state that an intervention must be presented before judgment.

Once such intervention is allowed, the Court can then, in accordance with rule 73A(5) of the *Admiralty Rules*, and in the light of new evidence or even only of a new hearing, re-examine the judgment delivered and thus ascertain the rights of the parties.

The sums claimed by the plaintiffs for accommodation and meals must be considered as wages or emoluments, and consequently plaintiffs must benefit from a maritime lien which therefore gives them precedence over the mortgage debt claimed by the intervenor. Such sums are indeed emoluments since, had the plaintiffs remained on board the vessel, such meals and accommodation would have been provided and would constitute benefits and emoluments which they enjoyed as members of the ship's crew. *The Tergeste* (1903) P. at p. 32. The same would hold true when the members of the crew were no longer on board but were ashore awaiting their repatriation. *Kinley v. Sierra Nevada* (1924) Ll.L.L. 294 at p. 297. It is the same in Canada since the definition of "wages" in s. 2(113) of the *Canada Shipping Act* includes emoluments and such emoluments must include expenditures for meals and accommodation, at least until the date that the action was brought. Section 207 of the *Canada Shipping Act*, R.S.C. 1952, c. 29, guaranteeing only the payment of a month's wages when a seaman is discharged before the commencement of the voyage, which is not the case here, that part of the judgment delivered by default awarding the plaintiffs a sum for wages and overtime for a period exceeding one month is cancelled, without prejudice to the plaintiffs' right to claim—if appropriate (*The Carolina*, M.L.C. at p. 141) and if they are entitled to do so—by an appropriate procedure such amounts as may have come due and been owing to them up until their discharge, or for the time they were

unemployed. Before the plaintiffs, in support of their claim for wages, could invoke Liberian law under which the defendant vessel is registered, the onus was on them to prove it legally—this they failed to do. The Court must therefore ascertain the rights of the parties according to Canadian law, presuming that Liberian law is similar.

Lastly, the Court established the procedure whereby the rank of debts or claims will be determined.

INTERVENTION

François de B. Gravel, Q.C., for the plaintiffs.

Raynold Langlois, for the intervenor.

NOËL J.: The intervenor, Ametco Shipping Inc., claims to hold a maritime first mortgage on the *Joseph H.* (ex Ekberg), a ship duly registered under the laws of the Republic of Liberia, bearing official No. 2741. Clause 10 of the mortgage deed (exhibit I-2), on which the intervenor bases its claim, authorizes it, when an action is instituted against the ship in which the vessel is seized or arrested, to give notice to the mortgagor to free the said ships of all liens and attachments except the mortgage debt within fifteen days of the action or of the seizure.

Action *in rem* with arrest of the ship was brought by Frenkel & Co. Inc. on October 16, 1969 in the Exchequer Court of Canada on its Admiralty side, in the District of Quebec, Quebec registry, bearing No. 388 in the Court's registers. Another action *in rem*—the present action—also with impounding of the ship, was brought before the same Court on November 7, 1969 by the ship's officers and crew, Ladefoged *et al,* under No. 390 in the Court's registers. In that action, judgment was pronounced on November 27, 1969, against the *Joseph H,* condemning the ship to pay the sum of $27,432.39. As a result of this judgment, the Court authorized the sale of the ship; this, however, had not been done when the present intervention was pleaded on February 3, 1970. The intervenor contends that because of these attachments, the owners of the *Joseph H* are in default with regard to the intervenant under the terms of the mortgage deeds, exhibits I-2 and I-3, and that they were also in default for another reason: at the time when the ship was arrested as mentioned above, the *Joseph H* was making a voyage between the port of Milwaukee, Wisconsin, United States of America and two ports in the Union of Soviet Socialist Republics, in contravention of the express stipulations of the mortgage deed. The intervenor further alleges that the owners of the *Joseph H,* The Joseph Navigation Corporation, failed to make a payment of $8,950 in American funds payable on November 1, 1969 and that under the provisions of clause 17 of the mortgage deed respecting default, the owners of the *Joseph H* lose the benefit of the term of the mortgage deed and the whole balance owing on the loan secured by that mortgage deed becomes due, payable and exigible forthwith. According to the intervenor,

the balance as at the date of the intervention amounts to $80,650, in American funds and bears interest at the rate of 8 per cent per annum. The intervenor also contends that it has the right to claim the November 1, 1969 instalment of $8,950, which also would bear interest at 8 per cent. Under the terms of the said clause 17, the intervenor has the right to have the *Joseph H* seized for default wherever it may be, as well as the right to recover from the proceeds of the sale of the said ship the sums owed by its owners with interest and the full cost of obtaining payment of the debt. In addition the intervenor invokes the laws of the Republic of Liberia under which the said mortgage deed was signed and registered.

Then, referring to a judgment pronounced by this Court on November 27, 1969 in the case bearing No. 390 in the registers of this Court in which the defendants, the ship *SS Joseph H* and her owners, were condemned to pay the officers and crew of the said ship the sum of $27,432.39, the intervenor declares, and correctly so, that judgment was delivered by default. It argues that this Court was not competent to allow the defendants' claim in the amount of $5,940.09 for the cost of room and board in a Quebec City lodging house since the jurisdiction of the Exchequer Court on its Admiralty side is limited, where claims for wages are concerned, to wages earned on board ship. It also contends that this Court could not award compensation to the officers and crew of the *Joseph H* under the provisions of s. 207 of the *Canada Shipping Act* because that Act does not apply to the crew agreement filed in the present action as exhibit C-1, which was signed under the law of the Republic of Liberia; the *Canada Shipping Act* applies only to crew agreements signed under its provisions.

The intervenor also holds that even if s. 207 of the *Canada Shipping Act* did apply, the members of the ship's crew acquire their right of action under the provisions of the said s. 207 only after the two-month period mentioned therein has expired. Therefore, the intervenor asks this Court (1) to declare its intervention good and valid; (2) to recognize its right to recover the balance owing on the loan guaranteed by the maritime first mortgage on the ship *Joseph H;* (3) to reverse the judgment pronounced by this Court in the present case on November 27, 1969, and to reduce the entitlement of the officers and crew to $10,715 in American funds as wages, plus $6,695.30 in Canadian funds to cover their fare home; to order Ametco Shipping Inc. to recover its claim from the proceeds of the forced sale of the ship *Joseph H* after the legal costs and the two amounts mentioned above have been paid.

The plaintiffs contest the intervenor's aggressive intervention and declare that if the intervenor has rights, such rights can in no way affect the judgment pronounced in their favour for payment of wages, as well as the privileged right which the Act gives them over the ship to obtain payment of what is owing to them.

The plaintiffs add that the aggressive intervention based on art. 208 of the *Code of Civil Procedure* is not founded in law and, in any case, cannot permit the intervenor to oppose the judgment pronounced in favour of the plaintiffs on November 27, 1969. They also allege that, in the first place, this judgment is well-founded with respect to the award of $5,940.09 for living expenses during their stay in Quebec; they say, moreover, that this amount is less than the $6,673.83 actually spent by the crew of the *Joseph H* before their departure, as proved by the statement from Mr. Poirier, owner of Manoir Lafayette, filed as exhibit C-1. The plaintiffs also contend that the judgment is well founded with respect to the month's compensation which was awarded, adding that they had coming to them, under their work agreement and Liberian law, not just a month's wages but their full wages until their discharge which was given to them on December 15, 1969 by Niels Ladefoged, First Mate on board the said ship. In this respect, the plaintiffs argue that they have the right to claim as wages of the officers and crew from September 1, 1969 to November 30, 1969, the sum of $10,715 which was in fact awarded to them by judgment of November 27, 1969, as well as a sum of $3,043.50 claimed as wages owing to Ladefoged Stamadiadi and Figue Fredo for the period December 1 to 31, 1969, and to the other members of the crew from December 1 to 13, 1969. They say that Liberian law provides for compensation equal to 15 days' basic wages, in addition to any wages which may be owing; this would represent a sum of $2,018 in American funds. They say that they are also justified in claiming " leave granted under Liberian law", to wit, the sum of $935, also in American funds.

Therefore they ask this Court (1) to dismiss the aggressive intervention with costs, as ill-founded in fact and in law; (2) to recognize their right to "readjust" the various items of claims already awarded to them in the judgment of November 27, 1969, and to pronounce judgment in accordance with the evidence given before this Court about the amounts claimed and, lastly, (3) to order the plaintiffs to recover their debt from the proceeds of the forced sale of the ship *SS Joseph H* after legal costs have been paid.

Counsel for the plaintiffs contends that the intervention could not be allowed under articles 208 *et seq.* of the *Code of Civil Procedure* as was done on December 10, 1969 by one of the judges of this Court because, as stipulated in art. 208 of the *Code of Civil Procedure,* this procedure is allowed only before judgement. It seems to me that the learned judge had recourse by analogy to the provisions of Rule 2 of the *General Rules and Orders* of this Court, as this rule permits him to do, in adopting the procedure of Quebec to authorize the intervenor to intervene in the present case since there were no other appropriate general rules or orders.

However, Rule 215 of the *Admiralty Rules* permits a party to use English procedure as well in all cases where the rules of the Exchequer Court do not contain appropriate rules. Order 75, r. 17 of the Rules of the

English Supreme Court indeed contains a procedure which permits an intervention even after judgment since it is not stated that the intervention must be submitted before judgment. This order reads as follows:

> Interveners (0.75 r. 17)).
>
> 17. (1) Where property against which an action in rem is brought is under arrest or money representing the proceeds of sale of that property is in court, a person who has an interest in that property or money but who is not a defendant to the action may, with the leave of the Court, intervene in the action.
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> (2) An application for the grant of leave under this rule must be made ex parte by affidavit showing the interest of the applicant in the property against which the action is brought or in the money in court.
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> (3) A person to whom leave is granted to intervene in an action must enter an appearance therein in the registry or, if the action is proceeding in a district registry, that registry within the period specified in the order granting leave; and Order 12, rules 1 to 4, shall, with the necessary modifications, apply in relation to the entry of appearance by an intervener as if he were a defendant named in the writ.
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> (4) The Court may order that a person to whom it grants leave to intervene in an action shall, within such period as may be specified in the order, serve on every other party to the action such pleading as may be so specified.

The Honourable Judge who allowed the intervention could therefore do so under this rule and this, in my opinion, is sufficient to dispose of the objection of counsel for the plaintiffs to the authority granted to the intervenor to intervene in the present case.

Once this intervention is allowed, the Court can then, in accordance with Rule 73A of the *Admiralty Rules,* allow the intervenor to dispute the validity of the judgment delivered by default in the present case. Indeed, under Rule 73A(5) the Court may, on such terms as it thinks just, set aside or vary any judgment delivered by default. Although one of the counsel in this action contends that this rule applies only to the parties concerned and cannot be applied to a third party, it does not seem to me that the wording of this rule limits its application in that way. Indeed, it is this rule which now enables the Court, when faced with new evidence or merely with new argumentation, to re-examine the judgment handed down and thus to ascertain the rights of the parties. Actually, Rule 73A(5) is sufficiently broad to permit the Court even to reverse a judgment delivered by default whenever, because the action was not contested, it heard only one side of the argument. Therefore, the intervenor was permitted to present its evidence, the plaintiffs to contest it and both parties to plead orally.

Before the present intervention was heard, counsel for the intervenor served on counsel for the plaintiffs a notice to admit documents and a notice to admit facts. The documents in question are the mortgage deed of November 1, 1968, granted by Joseph Navigation Corporation, a Liberian firm, the owner of the ship, to Ametco Shipping Inc., a firm in the State of New York, the mortgagee, as well as a rider to the mortgage deed of November 1, 1968, the latter bearing No. 2741, registered at the office of the Deputy Commissioner for Maritime Affairs of the Republic of Liberia, at the port of New York, on the same date in book PM29, page 724. The intervenor requests admission of the following facts: (1) that the intervenor legally holds the above-mentioned mortgage on the ship *Joseph H* (Ex-Ekberg) which is duly registered under the laws of the Republic of Liberia and bears

official number 2741; (2) that clause 10 of the mortgage deed (exhibit I-2) permits it to exercise its right to claim reimbursement of the principal and interest; (3) that an action *in rem* was instituted in this Court, bearing No. 388, in which Frenkel & Co. Inc. sued the ship *Joseph H* on October 16, 1969, accompanied by the arrest of the ship; (4) that another action *in rem* was brought before this Court, namely the present action, Ladefoged Niels *et al versus* the ship *Joseph H,* also with arrest of the ship; (5) that judgment was pronounced on November 27, 1969 against the *Joseph H* in the present case condemning the ship to pay $27,432.39, and permission was then obtained to sell the ship; (6) that when the ship was arrested, the *Joseph H* was making a voyage between the port of Milwaukee, Wisconsin, United States of America, and two ports in the Union of Soviet Socialist Republics, the whole contrary to the express stipulations of the mortgage deed; (7) that under the terms of the mortgage deed and its rider, the original secured debt was $107,500 in American funds plus interest, to be paid by March 1, 1972; (8) that the balance of the debt secured by mortgage now amounts to $80,650 in American funds with interest on this sum at the rate of 8 per cent per annum from August 1, 1969, plus the costs of recovering this sum, including legal and extra-legal costs and (9) that the facts set forth in Thomas J. Cassidy's affidavit, filed as exhibit I-1 are true. These facts, according to the affidavit of the president of Ametco Shipping Inc., the mortgagee, are that: Ametco Shipping Inc. is the mortgagee in the first mortgage of November 1, 1968 on the *Joseph H;* it agreed to a rider or supplement on August 13, 1969 which was registered at the office of the Deputy Commissioner for Maritime Affairs of the Republic of Liberia at the port of New York on August 14, 1969, in book PM21, page 486, and which postponed the date for repayment of the amount owing on the mortgage from November 10, 1971 to March 1, 1972; the amount now owing on the mortgage is $80,650 in American funds with interest at 8 per cent from August 1, 1969. Although art. 15 of the mortgage provides that Joseph Navigation Corporation, the shipowners, must carry insurance on the ship, this insurance expired on November 30, 1969 and was not continued or renewed and, under the terms of art. 17 of the mortgage deed, this default by the shipowners also permits the mortgagee to demand immediate payment of the amount borrowed on mortgage in principal and interest. Counsel for the plaintiffs, when the intervention was submitted, declared that he admitted all the facts of which the intervenor requested admission except for the amount claimed by the mortgagee, which he is contesting. Counsel for the intervenor stated that he was satisfied with this declaration, adding that with regard to the amount, he was reserving the right to establish its value at a later date since, for the moment, he did not want to incur the costs of bringing a witness from abroad to prove this item, and that he first wanted this Court to ascertain the nature and validity of the claims made in the present action against the ship, as well as their rank.

These were the circumstances in which counsel for the parties explained their respective claims to the Court.

The first important question that I have to ascertain here is the nature of the sum of $5,940.09 awarded by judgment of November 27, 1969 for the cost of room and board for the officers and crew during their stay at Manoir Lafayette in Quebec City. Indeed, in the autumn of 1969, because there was no heat on the ship and also because the ship's refrigeration system had broken down and the food had become inedible, the plaintiffs had to go ashore and, at the request of the ship's master, were put up in a lodging house in Quebec City. According to the evidence on file, the officers and crew went from here to work on the ship. According to counsel for the intervenor, the amounts thus claimed for accommodation and meals cannot be claimed as wages since, first of all, the Act states that seamen's wages must be earned on board ship and secondly, here it can be a question only of sums spent for room and board. Moreover, if they represent necessaries supplied to a ship, they should then be claimed by the innkeeper himself or by the ship's master; in any case, they cannot be claimed by the present plaintiffs, the officers and seamen of the ship. Indeed, if the Court should decide that these sums must be construed as forming part of the seamen's wages, they will benefit from a maritime lien and will have priority over the mortgage claim which the intervenor wants to exercise. If they can only be claimed as necessaries supplied, this part of the judgment of November 27, 1969 should be set aside if the present plaintiffs cannot claim them, and if they can, these sums should be classed as provisions or necessaries supplied and will rank after the intervenor's mortgage claim. The question which arises is not easy of solution and I did not have to resolve it when the judgment of November 27, 1969 was delivered by default, since at that time there were no claims conflicting with those exercised by the plaintiffs. Since then, as we have seen, the intervenor has submitted its claim and I now have to determine the rights of the parties. After an exhaustive study of judgments in admiralty on this matter, it seems to me that the sums claimed by the officers and seamen for accommodation and meals, in the amount of $5,940.09 as at the date of the judgment, and which they owe the lodging house keeper, must be considered as wages or emoluments, and consequently, these sums must benefit from a maritime lien which thereby gives them precedence over the mortgage claim lodged by the intervenor. The debts so incurred by the officers and seamen with the innkeeper are indeed emoluments since, had they remained on board ship, this food and lodging would have been provided and would constitute benefits and emoluments which they enjoyed as members of the ship's crew.[1] It is true that the Act states

[1] In *The Tergeste* (1903) p. 26 at page 32, Phillimore J. put it this way: "but I have to decide what is meant by their wages, and I come to the conclusion that what is called the victualling money or allowance of 40 lire per man per month in respect of victualling is part of his wages. Therefore, the master and crew should not only have the sum given them for their wages, but also the sum given to the crew in consideration of their finding their own provisions . . .".

that wages benefiting from a maritime lien must be earned on board a vessel, but here the evidence discloses that the wages claimed were in fact earned on board the ship since the crew members, at least until the date the action was instituted, went there every morning. However, for quite some time now, judgments have extended the meaning of wages to include in the maritime lien the victualling allowances to which the crew were entitled even after they ceased working on the ship, with the result that the plaintiffs may have here a valid claim for wages with maritime lien even for the period during which they no longer worked on the ship but were ashore awaiting repatriation. For added assurance, we need only refer to two judgments, *The Tergeste (supra)* which was mentioned earlier, and *Kinley v. Sierra Nevada.*[2] In *The Tergeste* it was in fact decided (by Phillimore J.) that victualling allowances were the same as wages and included a maritime lien and that, consequently, the total amount of the master's and crew's claim for wages and expenses until the ship was put in drydock, as well as the cost of their victualling from the date they left the ship until their departure from the country and also the cost of their repatriation ranked first. In *Kinley v. Sierra Nevada,* a decision pronounced in 1924 in an action in which a ship's officer sued the ship for his wages and victualling allowances, Sir Henry Duke said quite relevantly, at page 297, that:

> The result is, as it seems to me, that the plaintiff is entitled to his wages for the period in question and he can recover them in rem. There remains the question of the victualling allowance. My supposition was that the question whether this victualling allowance was part of the recoverable earnings of the plaintiff was not in question; but as an opinion on that subject is called for, I will say that it seems to me that wages here, having regard to the definition in the Merchant Shipping Act, covers the earnings of the seamen; and the earnings of the seamen in this employment were to be his sea pay and a victualling allowance. Whether the total is expressed in one figure or two seems to me a mere mode of expression and the judgment to which I think he is entitled is for wages at the agreed rate of his sea pay and for the victualling allowance—subject to this, that he is not entitled to judgment for anything beyond the period when he was actually serving until dismissed, unless he is within the beneficial operation of sect. 134 of the Merchant Shipping Act.

Such is also the case, I believe, in Canada since the definition of "wages" in s. 2(113) of the *Shipping Act* includes emoluments, and such emoluments, in the case now before us and in the circumstances under which they are claimed, must, it seems to me, include expenditures for room and board at least until the date of institution of the action on which judgment was pronounced on November 27, 1969. Consequently, the plaintiffs have a maritime lien for such expenditures which permits them to rank before the intervenor's mortgage claim.

However, the intervenor also disputes the validity of the sum of $4,082, to wit, the month's wages awarded to each of the plaintiffs in the judgment of November 27, 1969, under s. 207 of the *Canada Shipping Act,* Revised Statutes of Canada, 1952, c. 29, which reads as follows:

> 207. Where a seaman, having signed an agreement, is discharged otherwise than in accordance with the terms thereof before the commencement of the voyage,

[2] (1924) Ll.L.L. 294.

> or before one month's wages are earned, without fault on his part justifying that discharge, and without his consent, he is entitled to receive from the master or owner, in addition to any wages he may have earned, due compensation for the damages caused to him by the discharge, not exceeding one month's wages, and may recover that compensation as if it were wages duly earned.

Counsel for the intervenor submits that s. 207 of the *Shipping Act* cannot apply here since the agreement with the ship's officers and crew did not expire as the result of a discharge. Indeed, if we are to go by their written contestation of the intervention, the plaintiffs are still claiming up until December 31, 1969 where officers Ladefoged Stamadiadi and Figue Fredo are concerned, and up until December 15, 1969 with respect to the rest of the crew. Thus there had been no dismissal or discharge on the date the action was brought or even on November 26 and 27, 1969, when the case was heard, and consequently, s. 207 could not be cited on that date as ground for giving the plaintiffs the month's wages awarded to each of them by the judgment of November 27, 1969. Moreover, according to counsel for the intervenor, this judgment now has the authority of *res adjudicata* and the application of s. 207 cannot now be justified by a fact subsequent to the action, namely the discharge of the seamen or their departure for their respective countries which for some, according to the contestation, took place on December 15, 1969 and for others, on December 31, 1969. The agreement with the crew, exhibit P-2, specifically provides (in clause 5) only that if a seaman is put ashore for a reason for which he is not responsible, he is entitled to repatriation, but makes no provision for the case where his contract is terminated. However, there is an argument which, in my opinion, is conclusive—it is that s. 207 merely guarantees payment of a month's wages when a seaman is discharged before the commencement of the voyage, which is not the case here, or before a month's wages have been earned, which also is not the case here, since the judgment of November 27, 1969 awarded $10,715 for wages and overtime for a period exceeding a month. After a thorough examination of this section, and a re-examination of the facts proved during the inquiry which preceded this Court's judgment of November 27, 1969, it seems to me that the plaintiffs cannot cite s. 207 of the *Shipping Act,* and that part of the judgment awarding the sum of $4,082 must consequently be cancelled, without prejudice, however, to the plaintiffs' right to claim—if appropriate[8] and if they are entitled to do so—by an appropriate procedure such amounts as may have come due and been owing to them up until their discharge or dismissal, or for the time they were unemployed.

I now have to deal with another point raised by counsel for the plaintiffs regarding the application of Liberian law in support of the plaintiffs' claim for wages. It seems clear to me that since the plaintiffs, at the time of

[8] However, I would like to draw the attention of the parties to a ruling by Sir Phillimore in *The Carolina,* M.L.C. p. 141, where he said: "The practice of the Registry in this respect is founded on the principle that when a seaman institutes a suit for wages, he ceases to have any claim for subsequent wages upon the ship, and that principle has been acted upon in a great variety of cases. (1875) 3 Asp. M.L.C. 141.

the proceedings which ended in the judgment pronounced on November 27, 1969, did not prove the relevant Liberian law nor did they legally prove it during the argument on the present intervention, being content merely to place a copy of it on the record, a step to which counsel for the intervenor objected, moreover, and indeed having filed only the agreement with the crew (exhibit P-2) which contains certain clauses, they can avail themselves only of those clauses and cannot cite Liberian law. Indeed, in order to permit the plaintiffs to cite Liberian law, as they are attempting to do in the present case, they would have had to prove that law; since they failed to do so, my only course is to ascertain the rights of the parties according to Canadian law, assuming that Liberian law resembles it. Therefore it is not possible for me, in these circumstances, to substitute for the sum of $4,082 —that is, the month's salary awarded to each of the plaintiffs—a sum of $2,018 which plaintiffs claimed in their contestation of the intervention as compensation for 15 days' wages, and a sum of $935 claimed as compensation for leave, based on Liberian law. I wish to add that it was not established by legal proof that the sum of $5,940.09 for the cost of room and board should be raised to $6,673.83.

It therefore follows that I have to cancel the sum of $4,082 awarded by the judgment of November 27, 1969 under s. 207 of the *Shipping Act*. I also have to declare that the plaintiffs have a maritime lien for the allocation of the sum of $5,940.09 which was awarded to them for the cost of room and board since this sum is part of their wages and emoluments.

As for the intervenor's mortgage and its right to claim the amount which became due, I have to declare in view of the plaintiffs' admissions, but with respect to them only, that the intervenor's mortgage is valid under the Liberian law. I must also find in favour of the intervenor for the amount of its mortgage claim, the amount of which, however, will be established on reference to the Registrar of the Quebec Admiralty District, and which will bear interest at 8 per cent from November 1, 1969. Once established, this claim will rank immediately after any maritime liens which the plaintiffs may hold, the whole subject however to the right which any other subsequent party to these proceedings may have to file and establish his claim, as well as its rank, and to contest by appropriate procedure the parties' claims against the ship, including the intervenor's mortgage, and also subject to the plaintiffs' right to establish their right to claim such sums as may have fallen due to them up until their discharge or while they were unemployed. I must also order, but subject to the aforesaid restrictions that Ametco Shipping Co., once its claim has been established as stipulated above, recover it from the proceeds of the forced sale of the ship *Joseph H,* after legal costs have been paid, and after the holders of maritime liens and other holders of privileges prior to its own, following an order of priority to be determined by the procedure described hereunder.

The order of final priority of claims will not be fixed until 40 days after the date on which the proceeds of the sale of the ship have been deposited with the Court in the hands of the Registrar of the Quebec Admiralty Dis-

trict and after a notice has been published as set forth hereinafter. Within 7 days of the depositing of the proceeds of the sale of the ship, as mentioned above, the sheriff or the deputy sheriff, or the officer designated as assistant marshall in the Court's judgment of December 10, 1969, will see that a notice is published once a week for three consecutive weeks in a French- and an English-language newspaper in the province, to the effect that:

(*a*) the ship *Joseph H* has been sold by order of the Court in the present action *in rem* bearing No. 390 in the registers of the Court;

(*b*) the gross proceeds of the sale in the amount of $..... have been deposited with the Court in the hands of the Registrar of the Quebec Admiralty District;

(*c*) the order of priority of claims will not be established until 40 days have elapsed (from the date on which the proceeds were deposited with the Court) and after at least a five-day notice has been given to the claimants as to the date and place where the priority of claims will be established;

(*d*) any person who has a claim against the ship or the proceeds of its sale and for which he is planning to seek judgment shall make his claim before the expiry of this period, the whole, however, without prejudice to this Court's right to authorize the payment of certain claims even before the said time limit has expired.

In view of the shared success of the parties in these proceedings, I find it reasonable to order that the costs of this intervention and of its contestation should be claimed from the proceeds.