

1/83

Appeal No. 17 of 1981

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

IN THE COURT OF APPEAL IN SINGAPORE
CIVIL APPEAL NO. 7 OF 1980

B E T W E E N :

THE OWNERS OF THE SHIP
"AUGUST 8TH"

Appellants

- and -

COSTAS BACHAS

Respondent

In the Matter of Motion in Admiralty in Rem
No. 37 of 1978

Admiralty action in rem against
the ship "AUGUST 8TH"

Between

COSTAS BACHAS

Plaintiff

And

THE OWNERS OF THE SHIP
"AUGUST 8TH"

Defendants

RECORD OF APPEAL

Ince & Company,
Knollys House,
11 Byward St.,
London E.C.3.

Solicitors for the Appellants

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

IN THE COURT OF APPEAL IN SINGAPORE
CIVIL APPEAL NO. 7 OF 1980

B E T W E E N :

THE OWNERS OF THE SHIP
"AUGUST 8TH" Appellants

- and -

COSTAS BACHAS Respondent

In the Matter of Motion in Admiralty in Rem
No. 37 of 1978

Admiralty action in rem against
the ship "AUGUST 8TH"

Between

COSTAS BACHAS Plaintiff

And

THE OWNERS OF THE SHIP
"AUGUST 8TH" Defendants

RECORD OF APPEAL

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DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL
BUT NOT REPRODUCED

1. Affidavit of Costas Bachas filed on 15th March 1978 (Exhibits "CB1" to "CB7" not included)
2. Affidavit of Mrs. Celia Z. Moh filed on 6th April 1978 (Exhibits "CZM 1" to "CZM 6" not included)
3. Affidavit of Wang Hong Wong (Chief Officer), Pak Pong Yol (Chief Engineer) and Sutrisno (2nd Engineer) filed on 14th April 1978.
4. Affidavit of Costas Bachas filed on 14th April 1978 (Exhibit "CB1" not included).
5. Affidavit of Mrs. Celia Z Moh filed on 19th April 1978. (Exhibit "CZm 7" not included).
6. Affidavit of Mrs. Celia Z. Moh filed on 20th April 1978. (Exhibits "CZM 8" and "CZM 9" not included)
7. Affidavit of Costas Bachas filed on 24th April 1978 (Exhibits "CB/A" to "CB/N" not included)
8. Affidavit of Lalita Arjandas Sakhrani filed on 9th May 1978
9. Affidavit of Mrs. Celia Z. Moh with exhibits marked "CZM-A" and "CZM-B" filed on 12th August 1978

SUB-INDEX

- Exhibit "CZM-A" - Letter dated 19th January 1978 from Comptroller of Customs & Excise to Plaintiff.
- Exhibit "CZM-B" - Writ and Statement of Claim in Admiralty in Rem No. 88 of 1978.
10. Affidavit of Costas Bachas with exhibits marked "CB1" to "CB8" filed on 24th August 1978.

SUB-INDEX

- Exhibit "CB 1" - Letter dated 25th May 1978 from Rodyk & Davidson to Registrar, Supreme Court.
- Exhibit "CB 2" - Letter dated 30th May 1978 from Registrar, Supreme Court to Rodyk & Davidson.
- Exhibit "CB 3" - Letter dated 30th May 1978 from Netto, Low & Partners to Rodyk & Davidson.
- Exhibit "CB 4" - Letter dated 1st June, 1978 from Rodyk & Davidson to Registrar, Supreme Court.
- Exhibit "CB 5" - Letter dated 1st June 1978 from Registrar, Supreme Court to Rodyk & Davidson.
- Exhibit "CB 6" - Letter dated 17th August 1978 from Netto, Low & Partners to Comptroller of Customs & Excise.
- Exhibit "CB 7" - Letter dated 21st August 1978 from Director General of Customs to Netto, Low & Partners.
- Exhibit "CB 8" - Letter dated 22nd August 1978 from Strongwill Enterprise (Pte) Ltd. to Netto, Low & Partners.

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

IN THE COURT OF APPEAL IN SINGAPORE
CIVIL APPEAL NO. 7 OF 1980

B E T W E E N :

THE OWNERS OF THE SHIP
"AUGUST 8TH" Appellants

- and -

10 COSTAS BACHAS Respondent

In the Matter of Motion in Admiralty in Rem
No. 37 of 1978

Admiralty action in rem against
the ship "AUGUST 8TH"

Between

COSTAS BACHAS Plaintiff

And

THE OWNERS OF THE SHIP
"AUGUST 8TH" Defendants

20 RECORD OF APPEAL

No. 1

Amended Writ of Summons - 13th
January, 1978

AMENDED

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Admiralty in Rem)
No. 37 of 1978) Admiralty action in rem against
the ship "AUGUST 8TH"

Between

30 COSTAS BACHAS Plaintiff

And

THE OWNERS OF THE SHIP
"AUGUST 8TH" Defendants

In the High
Court of
Singapore

No. 1
Amended Writ
of Summons
13th January
1978

In the High Court of Singapore

Amended as deleted and underlined in red pursuant to Order 20, Rule 1 of the Rules of the Supreme Court 1970

No. 1
Amended Writ of Summons
13th January 1978.
(cont'd)

Dated this 16th day of March 1978.

Sd. Netto, Low & Partners
Plaintiffs' Solicitors

THE HONOURABLE MR. JUSTICE WEE CHONG JIN, CHIEF JUSTICE OF SINGAPORE, IN THE NAME AND ON BEHALF OF THE PRESIDENT OF THE REPUBLIC OF SINGAPORE.

10

To: The Owners of and other persons interested in the M.V. "AUGUST 8TH" of the port of Panama.

WE COMMAND YOU that within eight days after the service of this Writ, inclusive of the day of service, you do cause an appearance to be entered for you in an action at the Suit of the abovenamed Plaintiff and take notice that in default of your so doing the Plaintiffs may proceed therein and judgment may be given in your absence, and if the res described in this Writ is then under arrest of the Court it may be sold by Order of the Court.

20

Witness Mr. Alfonso Ang Cheng Ann, Asst. Registrar of the Supreme Court in Singapore the 13th day of January, 1978.

Sd. Netto, Low & Partners Sd. Alfonso Ang Cheng Ann
.....
Solicitors for the Plaintiffs Asst. Registrar

This Writ may not be served more than twelve calendar months after the above date unless renewed by Order of Court.

30

The Defendants may appear hereto by entering an appearance either personally or by Solicitor at the Registry of the Supreme Court.

The Defendants appearing personally, may if they desire, enter their appearance by post, and the appropriate forms may be obtained by sending a postal order for \$5.00 with an addressed envelope to the Registrar, Supreme Court, Singapore 6.

STATEMENT OF CLAIM

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1. The Plaintiff claims in respect of wages and other emoluments due to him and earned by him on board motor vessel "August 8th" and/or in the service of the Defendants, together with additional sums and/or compensation due to him

under his contract of service together with his costs of repatriation.

In the High Court of Singapore

No. 1
Amended Writ of Summons
13th January 1978.
(cont'd)

2. Further, the Plaintiff, as Master of "August 8th" in the course of his duties as Master and as the authorised agent of the Defendants, has expended and disbursed and is continuing to expend and disburse various sums of money for the benefit and on behalf of the Defendants. The Defendants are liable to reimburse the Plaintiff in respect of the said sums but have failed to do so. The Plaintiff claims and is entitled to be repaid the said sums by the Defendants.

10

P A R T I C U L A R S

(1)	Cash advances to crew of "August 8th" - US\$9615.30 <u>US\$9215.30</u> converted at the rate of US\$1/- to S\$2.45	<u>S\$22,577.48</u> <u>S\$23,557.85</u>
(2)	Disbursements - US\$18,490.75 converted-at-the-rate-of US\$1/--to-S\$2.45. <u>made on behalf of Owners of vessel "August 8th" from 15.10.1977 to 31.1.1978</u>	<u>S\$45,302.33</u> <u>S\$36,804.90</u> <u>S\$68,860.18</u>
(3)	<u>Master's port allowance for general personal expenses at US\$ per port day 116 x 8.00 - US\$928 converted at the rate of US\$1 to S\$2.45</u>	<u>S\$ 2,273.63</u> <u>S\$61,656.01</u> =====

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30

3. On the 24th November, 1977 at the Port of Singapore, "August 8th" was put under the arrest of this Court. The Plaintiff continued to serve on Board "August 8th" and has incurred expense in maintaining him and is incurring and will incur further expense until his return home.

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4. Between 7th October 1977 to ~~30th-November, 1977~~ 31st January, 1978 there is due a sum of ~~S\$14,637.55~~ S\$31,727.50 being ~~US\$5974.51~~ US\$12,950.00 converted at the rate of ~~US\$1/-~~ to ~~S\$2.45~~ to the Plaintiff as master's wages and the Plaintiff claims and is entitled to exercise a maritime lien upon the "August 8th" to secure the payment of all amounts due to him.

In the High Court of Singapore

No. 1 Amended Writ of Summons 13th January 1978. (cont'd)

5. The Plaintiff had also paid S\$2,525.67 to the Comptroller of Customs & Excise for offences committed by crew members of the vessel "August 8th" on the 16th day of January, 1978.

6. Notice of writing of the institution of this action was given to the Panama Consulate in Singapore on the 13th day of January, 1978.

And the Plaintiff claims:

- (1) Total disbursements at ~~S\$68,860.18~~ S\$61,656.01 claimed under paragraph 2 hereof 10
- (2) ~~Disbursements continually incurred by the Plaintiff~~
- (2) Wages at ~~S\$14,637.55~~ S\$31,727.50 from 7th October, 1977 to ~~30th November, 1977~~ 31st January, 1978.
- ~~(4) Wages from 1st December, 1977 till payment.~~
- (3) S\$2,525.67 being the sum paid to the Comptroller of Customs & Excise.
- (4) If necessary, a reference to the Registrar to assess the amounts due to the Plaintiff. 20

Sd. Netto, Low & Partners
.....
Solicitors for the Plaintiff

This Writ was issued by Messrs. Netto, Low & Partners of Room 2301-2302, 23rd Floor, Clifford Centre, 24 Raffles Place, Singapore 1, Solicitors for the said Plaintiff.

This Writ was served by me, Raymond Yeo, personally upon vessel "August 8th" lying at Eastern Special Purposes by attaching the Writ for a short time on the main mast of the said vessel and on removal of the Writ, a copy of it was left affixed in its place, on Saturday, the 28th day of January 1978 at 12.50 p.m. 30

Indorsed the 28th day of January, 1978.

Sd. Raymond Yeo
.....
Process - Server

(Filed this 13th day of January 1978)
(Refiled this 16th day of March 1978)

No. 2

Summons in Chambers Entered No. 1116/78
15th March 1978

In the High
Court of
Singapore

No. 2
Summons in
Chambers
Entered No.
1116/78 - 15th
March 1978

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Admiralty in Rem)
No. 37 of 1978) Admiralty action in rem
against the ship "AUGUST 8TH"

Between

COSTAS BACHAS Plaintiff

And

THE OWNERS OF THE SHIP
"AUGUST 8TH" Defendants

SUMMONS IN CHAMBERS

LET ALL PARTIES attend before the Registrar
in Chambers on Thursday the 23rd day of March 1978,
at 10.00 am. on the hearing of an application on
the part of the abovenamed Plaintiff for an Order
that the Plaintiff may be at liberty to sign
Final Judgment against the abovenamed Defendant
for the following amounts:

- (a) Cash advances made to crew
members \$22,577.48
- (b) Disbursements made on behalf of
owners of vessel "August 8th" \$39,078.53
- (c) Master's wages from 7th October
1977 to 31st day of January 1978 \$31,727.50
- (d) Amount paid to Comptroller of
Customs & Excise for offences
committed by crew members of
vessel "August 8th" \$ 2,525.67

The grounds of the application are set forth
in the affidavit filed herein.

Dated this 15th day of March 1978.

Entered No. 1116/78
Clerk: Sd. Hendrick Sd. Michael Khoo Kah Lip

REGISTRAR

This Summons is taken out by Messrs. Netto,
Low & Partners of Suit 2301-2302, 23rd Floor,
Clifford Centre, Raffles Place, Singapore 1.

(Filed this 15th day of March 1978)

In the High
Court of
Singapore

No. 3

Order of Court dated 10th May 1978

No. 3
Order of Court
dated 10th May
1978

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Admiralty in Rem }
No. 37 of 1978 } Admiralty action in rem against
the ship "AUGUST 8TH"

Between

(L.S.) COSTAS BACHAS Plaintiff

And

THE OWNERS OF THE SHIP
"AUGUST 8TH" Defendants

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BEFORE THE REGISTRAR MR. MICHAEL KHOO KAH LIP

IN CHAMBERS

Upon the adjourned application of the abovenamed Plaintiff made by way of Summons-in-Chambers Entered No. 1116 of 1978 coming on for hearing this day And Upon Reading the Affidavit of Costas Bachas filed herein on the 15th day of March 1978 together with exhibits referred to therein, the Affidavit of Mrs. Celia Z. Moh filed herein on the 6th day of April 1978 together with the exhibits referred to therein, the joint Affidavits of Wang Hong Wong, Pak Pong Yol and Sutrisno filed herein on the 14th day of April 1978, further Affidavits of Mrs. Celia Z. Moh filed herein on the 19th day of April 1978 and 20th day of April 1978 together with the exhibits referred to therein, further Affidavit of Costas Bachas filed herein on the 24th day of April 1978 together with the exhibits referred to therein and the Affidavit of Lalita Arjandas Sakhrani filed herein on the 9th day of May 1978 And Upon Hearing Counsel for the Plaintiff and for the Defendants, IT IS ORDERED:-

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30

(a) That the Defendants be given leave to defend this action on condition that the Defendants provide security for the sum of S\$95,909.18 as endorsed in the amended Statement of Claim within 14 days from the date of this order in default of which the Plaintiff may enter Final Judgment against the Defendants for the said sum as endorsed in the amended Writ of Summons.

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(b) That the costs of and occasioned by this application be costs in the cause.

Dated this 10th day of May 1978.
Sd. Low Wee Ping
Asst. Registrar

(Filed this 24th day of May 1978)

No. 4

Judgment dated 31st July, 1978

In the High
Court of
Singapore

No. 4
Judgment dated
31st July 1978

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Admiralty in Rem)
No. 37 of 1978) Admiralty action in rem
against the ship "AUGUST 8TH"

Between

(L.S.) COSTAS BACHAS Plaintiff

And

THE OWNERS OF THE SHIP
"AUGUST 8TH" Defendants

J U D G M E N T

DATED THIS 31st DAY OF July 1978

Pursuant to the Order of Court dated the 10th day of May, 1978 whereby it was ordered that the Defendants be given leave to defend this action on condition that they provide security for the sum of S\$95,909.18 as endorsed in the amended statement of Claim within 14 days from the date of this Order in default of which the Plaintiff may enter Final Judgment against the Defendants for the said sum as endorsed in the amended Writ of Summons.

IT IS THIS DAY ADJUDGED that the Defendants do pay the Plaintiff \$95,909.18 and \$350.00 costs.

Entered this 31st day of July 1978.

Volume 194 Page 109 at 10.30 a.m.

Sgd. Tan Seck Sam

ASST. REGISTRAR

(Filed this 31st day of July 1978)

In the High
Court of
Singapore

No. 5

Notice of Motion - 8th August 1978

No. 5
Notice of
Motion - 8th
August 1978

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Admiralty in Rem)
No. 37 of 1978) Admiralty action in rem against
the ship "AUGUST 8TH"

Between

COSTAS BACHAS Plaintiff

And

THE OWNERS OF THE SHIP
"AUGUST 8TH" Defendants

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NOTICE OF MOTION

Take notice that the Court will be moved on Friday the 25th day of August, 1978 at 10.30 a.m., or so soon thereafter as Counsel can be heard by Mr. Pathmanaban Selvadurai of Counsel for the abovenamed Defendants for the following orders:-

1. That the judgment entered herein on the 31st day of July, 1978 against the Defendants for the sum of \$95,909.18 and \$350.00 costs be set aside on the grounds that: 20

(1) The Registrar had no power in an Admiralty in Rem action to hear an application for summary judgment under Order 14 of the Rules of the Supreme Court, 1970 and to make any orders thereon. Accordingly the Registrar had acted ultra vires his powers; or alternatively,

(2) That the Plaintiff had entered judgment in an amount larger than what is due to him. 30

2. Any other relief that may seem appropriate or just to this Honourable Court.

3. That the costs of this application be provided for.

Dated the 8th day of August, 1978.

Sd. Rodyk & Davidson
Solicitors for the Defendants.

To: Messrs. Netto, Low & Partners,
Solicitors for the Plaintiff,
Singapore.

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(Filed this 8th day of August, 1978)

No. 6

Notes of Argument - 25th January 1980

In the High
Court of
Singapore

IN THE HIGH COURT IN SINGAPORE

Motion in Admiralty in)
Rem No. 37 of 1978) Admiralty action in rem
against the ship
"AUGUST 8TH"

No. 6
Notes of
Argument - 25th
January 1980

Between

Costas Bachas Plaintiff

And

The Owners of the ship
"AUGUST 8TH" Defendants

Coram: Choor Singh J.

NOTES OF ARGUMENT

Friday, 25th January 1980

Selvadurai for defds. - applicants
A. Haridas for pltf - respondent

Selvadurai:

Application to set aside judgment.
Main issue - whether Order 14 is available
in an Admiralty action.
1979 White Book, vol.1 Order 14 page 132
English Order 14 Rule 2(a) excludes Admiralty
action in rem
Now, look at position before 1965.
1965, White Book, vol.1, page 181
Under subrule (2) we do not have the
exclusion of Admiralty in rem actions. But
look at last para. "the Order does not apply
etc. etc.
Probate or Admiralty action".
Same proposition is repeated in the 1966
White Book page 181, vol. 1.
Now, refer to our Rules - page 28.
Express exclusion is not to be found in our
Rules.
Position same as in England before 1965.
The procedure in Admiralty in the U.K. is
governed today by Order 75 of Rules of the
Supreme Court and in S'pore by Order 70 of
our Rules which are based on Order 75 of the
U.K. Rules.
For position in U.K. before 1965 see British
Shipping Laws - Admiralty Practice, vol. 1,
1964 edn.

In the High
Court of
Singapore
No. 6
Notes of
Argument - 25th
January 1980
(cont'd)

para. 43
para. 160 foot note 2
para. 430
para. 712
para. 954
para. 1310

The practice in the 1979 White Book re Order 14 is a confirmation of the earlier practice. It did not introduce anything new. Nor did it change the law. English Order 75, Rule 21 (Our Order 70 Rule 20). Every application for a judgment must be made by motion. For our procedure see Order 70, Rule 3 Procedure same as in the U.K.

10

Application must be by motion. This is mandatory.

English Order 75, Rule 9 deals with set aside judgment.

Our Order 70, Rule 9 contains same provision. Second ground. They signed judgment for an amount in excess of what was due. Concerned with one item only - \$3,555.67. Fine paid by pltf. for a customs offence. Fine paid for a criminal offence. No employer is liable for a criminal act of his employee.

20

If you sign judgment for a sum which is in excess of what is due, that judgment is fundamentally wrong and cannot be rectified by reducing the judgment.

See Anlaby & Ors. v. Pretorius,
(1888) Q.B.764

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Bolt & Nut v. Rowlands,
(1964) 2 Q.B. 10

Intld. C.S.

Haridas:

1965 White Book, page 181
Order 14, Rule 2 - Admiralty excluded.
Express exclusion - no mention of Admiralty.
Our Order 14, Rule 2 applies to every action begun by writ.

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All jurisdictions included subject to any other rule restricting it.
1979 White Book, page 132 Order 14, Rule 2
Various jurisdictions are spelled out
Para.(c) expressly excludes action in rem.
We have no such provision in our Rules.

Basic question: Can I invoke Order 14 in an Admiralty action? All I have to look at is Order 14. Only two limitations set out.

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I am not expressly excluded.
Our action is begun by writ and therefore I am entitled to proceed under 14.
Second ground is question of quantum.

Conditional leave granted. They failed to provide security. Question of quantum cannot be raised now. It was not raised before the Registrar. Res judicata under Order 14.

1964 M.L.J. 49.

10 Master has right to claim disbursements paid on behalf of the ship. The fine was on the ship. Master was summoned because Master is responsible for the ship. It was not a personal offence committed by the Master. Once security is ordered, you must comply with that condition. If judgment is entered due to failure to comply, you cannot raise those points which you raised before the Registrar in order to set aside a judgment. You can raise those points on appeal against the Order made by the Registrar.

20 Admiralty in rem 446/78

Judgment dated 19.11.79

Judgment entered because defd. failed to comply with Order for security.

Judgment entered in July 1978.

Pltf. is a foreigner. Justice has been delayed.

Selvadurai:

Evans v. Bartlam, 1937 A.C. 473

30 We have an Admiralty court
Your lordship is sitting as an Admiralty Judge.
There are special Admiralty rules and procedure.

C.A.V.

Sgd. CHOR SINGH

Certified true copy.

Sd. Koh Bee Kiat

Private Secretary to Judge

Court No. 6

Supreme Court, Singapore.

In the High Court of Singapore

No. 6

Notes of Argument - 25th January 1980 (cont'd)

In the High
Court of
Singapore

No. 7

Grounds of Judgment - 4th February
1980

No. 7
Grounds of
Judgment - 4th
February 1980

IN THE HIGH COURT IN SINGAPORE

Motion in Admiralty in)
Rem No. 37 of 1978) Admiralty action in rem
against the ship "AUGUST
8TH"

Between

Costas Bachas Plaintiff 10

And

The Owners of the Ship
"AUGUST 8TH" Defendants

Coram: Choor Singh J.

J U D G M E N T

This is an application by the defendants to set aside the judgment entered against them on the 31st July 1978 in favour of the plaintiff for the sum of \$95,909.18.

The facts are these. The plaintiff issued the Writ in these proceedings on the 13th January 1978 claiming wages and other emoluments due to him together with disbursements made by him as the Master of the motor vessel "AUGUST 8TH". The defendants entered appearance on the 2nd February 1978. The plaintiff then took out a summons in chambers for liberty to sign judgment against the defendants under Order 14. This application was opposed by the defendants before the Registrar who gave leave to the defendants to defend the action on condition that the defendants provided security for the sum of \$95,909.18 within 14 days failing which the Plaintiff was to be at liberty to enter final judgment against the defendants for the sum claimed in the writ of summons. This Order was made by the Registrar on the 10th May 1978. The defendants failed to comply with the Order and judgment was entered for the plaintiff against them on the 31st July 1978. 20 30

The defendants did not appeal against the order of the Registrar giving them conditional leave to defend but on the 8th August 1978 they filed a Motion to set aside the judgment entered against them on the 31st July 1978 on two grounds: 40

"(1) the Registrar had no power in an Admiralty in Rem action to hear an

application for summary judgment under Order 14 of the Rules of the Supreme Court, 1970 and to make any orders thereon. Accordingly the Registrar had acted ultra vires his powers; or alternatively,

In the High Court of Singapore
No. 7
Grounds of Judgment - 4th February 1980
(cont'd)

- (2) the Registrar had entered judgment in an amount larger than what was due to the plaintiff."

10 For some reason this Motion was not heard until the 25th January 1980.

At the hearing before me the main issue was whether or not Order 14 procedure is available in an Admiralty action. Order 14 R.1 of the Rules of the Supreme Court 1970 which came into force on 2nd January 1971 reads as follows:-

20 O.14.R.1(1) Where in an action to which this Rule applies a statement of claim has been served on a defendant and that defendant has entered an appearance in the action, the plaintiff may, on the ground that that defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the Court for judgment against that defendant.

30 (2) Subject to paragraph (3), this Rule applies to every action begun by writ other than one which includes --

(a) a claim by the plaintiff for libel slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage; or

(b) a claim by the plaintiff based on an allegation of fraud.

(3) This Order shall not apply to an action to which Order 81 applies.

40 The parallel provision in the Rules of the Supreme Court of England is as follows:-

"O.14.R.1(1) Where in an action to which this rule applies a statement of claim has been served on a defendant and that defendant has entered an appearance in the action, the plaintiff may, on the ground that that defendant has no defence to a claim included in the writ,

In the High
Court of
Singapore

No. 7
Grounds of
Judgment - 4th
February 1980
(cont'd)

or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the Court for judgment against that defendant.

(2) Subject to paragraph (3), this rule applies to every action begun by writ in the Queen's Bench Division (including the Admiralty Court) or the Chancery Division other than --

10

(a) an action which includes a claim by the plaintiff for libel, slander, malicious persecution, false imprisonment or seduction.

(b) an action which includes a claim by the plaintiff based on an allegation of fraud, or

(c) an Admiralty action in rem.

(3) This Order shall not apply to an action to which Order 86 applies.

20

It will be seen that whereas subrule (2) of rule 1 of the English Order 14 expressly excludes in paragraph (c) an Admiralty action in rem from the scope of Order 14 procedure, there is no such specific exclusion in sub-rule (2) of rule 1 of our Order 14.

Mr. Selvadurai for the defendants submits that our Order 14 as it now stands is based on the position in England in 1965 and if one looks at the 1965 White Book one will see that although subrule (2) of rule 1 of Order 14 does not specifically exclude Admiralty actions in rem, the Note at the bottom of page 181 clearly states that "the Order does not apply to Probate or Admiralty actions". A similar Note appears in the 1966 WhiteBook. Mr. Selvadurai also refers to British Shipping Laws, Vol. 1 (Admiralty Practice) wherein it is emphasised over and over again that it is not possible in Admiralty to apply for summary judgment under Order 14. (see paragraphs, 43, 160, 430, 712, 954, 1310). Mr. Selvadurai contends that the practice in the 1979 White Book regarding Order 14 procedure is a confirmation of the earlier practice. It does not introduce anything new nor does it change the law. The submission is that Order 14 procedure has never been available in England in an Admiralty action in Rem and the position is the same today.

30

40

The procedure in an Admiralty action in England is governed by Order 75 of the Rules of

50

the Supreme Court, and in Singapore by Order 70 of our Rules which is based on Order 75 of the U.K. Rules. Every application for judgment must be made by motion. Mr. Selvadurai contends that this procedure is mandatory; that Order 14 procedure was not available to the plaintiff; that the Registrar had no jurisdiction to enter judgment under Order 14 and that the judgment is therefore bad in law and must be set aside.

In the High Court of Singapore
Singapore
No. 7
Grounds of Judgment - 4th
February 1980
(cont'd)

10 The second ground raised is that the judgment was signed for an amount in excess of what was due to the plaintiff. The defendants object to an item for \$3,555.67 which Mr. Selvadurai says was a fine paid by the plaintiff for a customs offence. It is contended that the fine was for a criminal offence; that an employer is not liable for the criminal acts of his employee and that the amount is therefore not recoverable from the defendants. It is submitted that if
20 judgment is entered for a sum which is in excess of what is due, the judgment is fundamentally wrong and cannot be rectified by reducing the amount of the judgment. The authority submitted in support of this submission is Bolt & Nut Co. v. Rowlands & Co. Ltd. (1964) 2 Q.B. 10.

Mr. Haridas for the plaintiff submits that one must look at the opening words of subrule (2) of Rule 1 of Order 14 of the Rules of the Supreme Court of England. The qualifying words are "every action in the Queen's Bench or Chancery Division begun by writ..." Admiralty actions are excluded because they cannot be commenced in these two Divisions. The position is the same in the 1965 White Book as well as in the 1966 White Book. In the 1979 White Book there is again express provision in paragraph (c) of subrule (2) which specifically excludes an Admiralty action in Rem.
30 Mr. Haridas submits that rule 1 in our Order "applies to every action begun by writ". There is no exclusion of Admiralty actions. He contends that if the Rules Committee which drafted our Rules intended to exclude Admiralty actions from our Order 14 they would have made a specific provision to that effect. Mr. Haridas maintains that in the absence of any express exclusion, rule 1 of Order 14 applies to all
40 Admiralty actions in Singapore.

As regards the second ground raised by the defendants Mr. Haridas submits that the sum of S/3,555.67 was paid by the plaintiff as Master of the ship in payment of a fine imposed on the ship. It was not for a criminal offence committed by the plaintiff and accordingly the plaintiff is entitled to recover this sum as a disbursement.
50

In my judgment the basic question in this case is whether or not the plaintiff is entitled to

In the High
Court of
Singapore

No. 7
Grounds of
Judgment - 4th
February 1980
(cont'd)

proceed under Order 14 to obtain summary judgment. In my opinion the answer to the question lies in the express wording of our Order 14. Limitations set out therein do not apply in this case. Admiralty actions are not expressly excluded in our Order 14 and therefore the procedure under Order 14 is available to the plaintiff. In my opinion, reference to the Rules of the Supreme Court of England is of no help because the High Court in England has various Divisions for the more convenient despatch of business and Order 14 procedure has always been available only in the Divisions specified in subrule (2) of rule 1 of Order 14. We have no such Divisions in our High Court and it follows that Order 14 procedure is avail in every action begun by a writ save and except actions specified in paragraphs (a) and (b) of subrule (2).

10

As regards the second ground relied upon by the defendants, there is documentary evidence that the sum of \$3,555.67 was paid by the plaintiff for a fine imposed on the ship and accordingly he is entitled to recover this sum as a disbursement made on behalf of the ship. The letter from the Customs Department dated 21st August 1978 and marked Exhibit "CB7" which is referred to in the affidavit of the plaintiff filed on the 24th August 1978, states quite clearly that the fine was imposed on the plaintiff in his capacity as Master of the vessel and "not in his personal capacity".

20

30

For these reasons the application to set aside the judgment entered on the 31st July 1978 against the defendants is dismissed with costs.

Dated this 4th day of February, 1980.

Sd. CHHOR SINGH,
J U D G E

Certified true copy.

Sd. Koh Bee Kiat
Private Secretary to Judge
Court No. 6
Supreme Court, Singapore

40

No. 8

Formal Order - 4th February 1980

In the High
Court of
Singapore

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

No. 8
Formal Order
4th February
1980

Admiralty in Rem)
No. 37 of 1978)

Admiralty action in rem
against the ship "August 8th"

Between

(L.S.)

COSTAS BACHAS

Plaintiff

And

THE OWNERS OF THE SHIP
"AUGUST 8TH"

Defendants

ORDER OF COURT

BEFORE THE HONOURABLE MR. JUSTICE CHOOR SINGH

IN OPEN COURT

UPON THE ADJOURNED MOTION preferred unto the
Court this day by Mr. Pathmanaban Selvadurai,
Counsel for the abovenamed Defendants AND UPON
READING the Affidavit of Mrs. Celia Z. Moh filed
herein on the 12th day of August 1978 together with
the exhibits referred to therein and the Affidavit
of Costas Bachas filed herein on the 24th day of
August 1978 together with the exhibits referred to
therein AND UPON HEARING Counsel for the Plaintiff
and for the Defendants IT IS ORDERED THAT:-

1. The said Motion herein be dismissed with
costs to be taxed and paid by the Defendants
to the Plaintiff.

Dated this 4th day of February 1980.

Sgd. Tan Seck Sam
Asst. Registrar

(Filed this 11th day of February 1980)

No. 9

Notice of Appeal - 9th February, 1980

In the Court
of Appeal
Singapore

IN THE COURT OF APPEAL IN SINGAPORE

CIVIL APPEAL NO. 7 OF 1980

No. 9
Notice of Appeal
9th February
1980

Between

In the Court
of Appeal
Singapore

THE OWNERS OF THE SHIP
"AUGUST 8TH"

Appellants

And

No. 9
Notice of Appeal
9th February
1980
(cont'd)

COSTAS BACHAS

Respondent

In the Matter of Motion in Admiralty in Rem
No. 37 of 1978

Admiralty action in rem against
the ship "AUGUST 8TH"

Between

COSTAS BACHAS

Plaintiff

10

And

THE OWNERS OF THE SHIP
"AUGUST 8TH"

Defendants

NOTICE OF APPEAL

Take notice that the abovenamed Appellants
being dissatisfied with the decision of the
Honourable Mr. Justice Choor Singh given at
Singapore on the 25th day of January, 1980 appeal
to the Court of Appeal against the whole of the
said decision.

20

Dated the 9th day of February, 1980.

Sd. Rodyk & Davidson
Solicitors for the Appellants.

To The Registrar,
Supreme Court,
Singapore.

And to Messrs. Netto, Low & Partners,
Solicitors for the Respondent,
Singapore.

The address for service of the Appellants
is c/o Messrs. Rodyk & Davidson, 32nd Floor,
OCBC Centre, Chulia Street, Singapore.

30

(Filed this 9th day of February, 1980)

No. 10

Certificate for Security for Costs
9th February, 1980

In the Court
of Appeal
Singapore

No. 10
Certificate for
Security for
Costs - 9th
February 1980

IN THE COURT OF APPEAL IN SINGAPORE

CIVIL APPEAL NO. 7 OF 1980

Between

THE OWNERS OF THE SHIP
"AUGUST 8TH"

Appellants

And

10 (L.S.) COSTAS BACHAS

Respondent

In the Matter of Motion in Admiralty in Rem
No. 37 of 1978

Admiralty action in rem against
the ship "AUGUST 8TH"

Between

COSTAS BACHAS

Plaintiff

And

THE OWNERS OF THE SHIP
"AUGUST 8TH"

Defendants

20 CERTIFICATE FOR SECURITY FOR COSTS

This is to certify that the abovenamed
Appellants have deposited the sum of \$500.00 by
way of security for the Respondent's costs of the
appeal with the Accountant-General.

Dated the 9th day of February, 1980.

Sd. Tan Seck Sam
Asst. REGISTRAR.

(Filed this 9th day of February, 1978)

No. 11

30 Petition of Appeal - 20th March, 1980

No. 11
Petition of
Appeal - 20th
March 1980

IN THE COURT OF APPEAL IN SINGAPORE

CIVIL APPEAL NO. 7 OF 1980

Between

In the Court
of Appeal
Singapore

No. 11
Petition of
Appeal - 20th
March 1980
(cont'd)

THE OWNERS OF THE SHIP
"AUGUST 8TH"

Appellants

And

COSTAS BACHAS

Respondent

In the Matter of Motion in Admiralty in Rem
No. 37 of 1978

Admiralty action in rem against
the ship "AUGUST 8TH"

Between

COSTAS BACHAS

Plaintiff

10

And

THE OWNERS OF THE SHIP
"AUGUST 8TH"

Defendants

PETITION OF APPEAL

To the Honourable the Judges of the Court of Appeal.

The Petition of the abovenamed Appellants
showeth as follows:-

1. The appeal arises from a Motion taken out by
the Appellants/Defendants to set aside the judgment
entered against them on the 31st day of July, 1978
in favour of the Respondent/Plaintiff for the sum
of \$95,909.18 and \$350.00 costs. 20

2. By Order dated the 4th day of February 1980,
judgment was given for the Respondent/Plaintiff
against the Appellants/Defendants when the Motion
was dismissed with costs.

3. Your Petitioners are dissatisfied with that
part of the said Judgment in which the Learned
Judge ruled that the summary procedure under Order
14 of the Rules of the Supreme Court was available
in an Admiralty Action in Rem. 30

4. The relevant part of the Judgment reads as
follows:-

"In my judgment the basic question in
this case is whether or not the Plaintiff
is entitled to proceed under Order 14 to
obtain summary judgment. In my opinion
the answer to the question lies in the
express wording of our Order 14. Limitations
set out therein do not apply in this case. 40
Admiralty actions are not expressly
excluded in our Order 14 and therefore the
procedure under Order 14 is available to
the Plaintiff. In my opinion, reference to
the Rules of the Supreme Court of England is

of no help because the High Court in England has various Divisions for the more convenient despatch of business and Order 14 procedure has always been available only in the Divisions specified in subrule (2) of rule 1 of Order 14. We have no such Division in the High Court and it follows that Order 14 procedure is avail (available) in every action begun by writ save and except actions specified in paragraphs (a) and (b) of subrule (2)".

In the Court
of Appeal
Singapore

No. 11
Petition of
Appeal - 20th
March 1980
(cont'd)

10
5. In so deciding, the Learned Judge was wrong in law in stating that the administrative division of legal work in the High Court in England with its various Divisions specialising in the different branches of the law had a bearing on the availability or otherwise of the Order 14 procedure in Admiralty.

20
6. The current Singapore Rules of the Supreme Court came into force on the 2nd of January 1971 and they brought the rules of procedure in our Supreme Court into line with the Rules of the Supreme Court obtaining in England.

30
7. In England, the rules relating to Order 14 procedure in the White Books dated 1965, 1966, 1967 and 1970 which are in para materia to the rules of Order 14 in our Rules of the Supreme Court, were not available in Admiralty actions in rem despite the fact that there was in England as in Singapore no specific provision in the respective Orders 14 excepting Admiralty in rem actions from their effect. Such specific exclusion appeared for the first time in the White Book of 1979. The said specific exclusion did not however change the rules of procedure in this regard in England. It merely confirmed the procedure as it always had been in England.

40
8. It is because of the fact that a judgment in rem in Admiralty is, unlike any judgment in personam, not confined to matters between the specific parties to an Admiralty suit, but is a judgment against all persons dealing with the res, that it was stipulated in the rules of procedure in Admiralty both in England and Singapore that an application for a default judgment in an Admiralty action in rem must be made by motion.

50
9. In the circumstances the Learned Registrar of the Supreme Court had no power to entertain the Respondent's application for summary judgment and to make the orders which he made.

10. Your Petitioners pray that such judgment may

In the Court
of Appeal
Singapore

No. 11
Petition of
Appeal - 20th
March 1980
(cont'd)

be varied, reversed or set aside and that an order
in terms be made on the Motion herein.

Dated the 20th day of March, 1980.

Sd. Rodyk & Davidson
Solicitors for the Appellants

(Filed this 20th day of March, 1980)

No. 12
Judgment of
the Court of
Appeal of
Singapore
16th October
1980.

No. 12

Judgment of the Court of Appeal of
Singapore - 16th October, 1980

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

10

CIVIL APPEAL NO. 7 OF 1980

Between

The Owners of the Ship
"August 8th" Appellants

And

Costas Bachas Respondent

(In the Matter of Motion in Admiralty
in Rem No. 37 of 1978

Admiralty action in rem against the
ship "August 8th"

20

Between

Costas Bachas Plaintiff

And

The Owners of the ship
"August 8th" Defendants)

Coram: Wee Chong Jin, C.J.
T. Kulasekaram, J.
A.P. Rajah, J.

JUDGMENT

On 13th January 1978 the respondent issued
a writ in an Admiralty action in rem claiming
wages and other emoluments due to him together
with disbursements made by him as master of the
motor "August 8th". The appellants entered
appearance on 2nd February 1978. The respondent
then took out an Order 14 application for summary
judgment.

30

10 The application was heard by the Registrar who gave leave to the appellants to defend the action on condition that the appellants provided security for the sum of \$95,909.18 within 14 days failing which the respondent was to be at liberty to enter final judgment against the appellants for the sum claimed in the writ. The appellants failed to comply with the order of the Registrar and judgment was entered for the respondent against them on 31st July 1978.

In the Court
of Appeal
Singapore

No. 12
Judgment of
the Court of
Appeal of
Singapore
16th October
1980
(cont'd)

20 On 8th August 1978 the appellants filed a motion to set aside the judgment entered against them on the ground, inter alia, that the Registrar had no power in an Admiralty action in rem to hear an application for summary judgment under Order 14 of the Rules of the Supreme Court, 1970 and to make any orders thereon. The motion was dismissed by the High Court and the appellants now appeal.

The sole question before us is whether or not Order 14 procedure is available to a plaintiff in an Admiralty action in rem. Order 14 Rule 1 reads as follows:-

30 "1.-(1) Where in an action to which this Rule applies a statement of claim has been served on a defendant and that defendant has entered an appearance in the action, the plaintiff may, on the ground that that defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the Court for judgment against that defendant.

(2) Subject to paragraph (3), this Rule applies to every action begun by writ other than one which includes -

40 (a) a claim by the plaintiff for libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage; or

(b) a claim by the plaintiff based on an allegation of fraud.

(3) This Order shall not apply to an action to which Order 81 applies."

The corresponding provision in England is Order 14 Rule 1 of the Rules of the Supreme Court, 1965 which reads as follows:-

In the Court
of Appeal
Singapore

No. 12
Judgment of
the Court of
Appeal of
Singapore
16th October
1980
(cont'd)

"1.-(1) Where in an action to which this rule applies a statement of claim has been served on a defendant and that defendant has entered an appearance in the action, the plaintiff may, on the ground that that defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the Court for judgment against that defendant.

10

(2) Subject to paragraph (3), this rule applies to every action begun by writ in the Queen's Bench Division (including the Admiralty Court) or the Chancery Division other than -

(a) an action which includes a claim by the plaintiff for libel, slander, malicious prosecution, false imprisonment or seduction,

20

(b) an action which includes a claim by the plaintiff based on an allegation of fraud, or

(c) an Admiralty action in rem.

(3) This Order shall not apply to an action to which Order 86 applies."

The appellants contend that our Order 14 procedure does not apply to an Admiralty action in rem although it is an action begun by writ. They rely on the fact that in England it was the settled practice that in Admiralty actions the procedure for summary judgment provided by the English Order 14 is not applicable until Rule 1(2) of that Order was recently amended. Prior to the recent amendment the English Order 14 Rule 1(2) did not contain the words "(including the Admiralty Court)" and "(c) an Admiralty action in rem".

30

We are unable to accept the appellants' contention. In our judgment on a plain reading of our Order 14 Rule 1, a plaintiff in an Admiralty action, whether in personam or in rem, can avail himself of its provisions. Rule 1 "applies to every action begun by writ" other than one which includes a claim referred to in Rule 1(2)(a) and (b) and Rule 1(3). Under Order 70 Rule 2 an Admiralty action in rem must be begun by writ and is therefore an action to which Order 14 Rule 1 applies. There is no provision in Order 70, which is the order which applies to Admiralty causes and matters, which provides for summary judgment in Admiralty

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causes and matters. In contrast Order 70 Rule 20, which provides the procedure in an action in rem for obtaining judgment in default of appearance or defence, specifically provides in subrule (10) that "Order 13 and Order 19 (except Rule 1) shall not apply to actions in rem". Order 13 is the order which provides the procedure for obtaining judgment in default of appearance to a writ and Order 19 is the order which provides the procedure for obtaining judgment in default of pleadings in an action begun by writ.

In the Court
of Appeal
Singapore

No. 12
Judgment of
the Court of
Appeal of
Singapore
16th October
1980
(cont'd)

Accordingly, the appeal is dismissed with costs.

Sd. Wee Chong Jin
Chief Justice,
Singapore.

Sd. T. Kulasekaram
(T. Kulasekaram)
Judge

Sd. A.P. Rajah
(A.P. Rajah)
Judge

SINGAPORE, 16th October 1980.

Certified true copy
Sgd.

Private Secretary to the Hon. the Chief
Justice, Supreme Court, Singapore 6.

No. 13

Formal Order of the Appellate Court
3rd November 1980

No. 13
Formal Order
of the
Appellate
Court - 3rd
November 1980

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

CIVIL APPEAL NO. 7 OF 1980

Between

The Owners of the ship "August
8th"

Appellants

(L.S.)

And

Costas Bachas

Respondent

(In the Matter of Motion in Admiralty in
Rem. No. 37 of 1978)

Admiralty action in rem against the
ship "August 8th"

In the Court
of Appeal
Singapore

Between

Costas Bachas

Plaintiff

And

The Owners of the ship
"August 8th"

Defendants

No. 13
Formal Order
of the
Appellate
Court - 3rd
November 1980
(cont'd)

Coram: The Honourable Chief Justice
Mr. Justice Wee Chong Jin,
The Honourable Mr. Justice Kulasekaram,
The Honourable Mr. Justice A.P. Rajah

IN OPEN COURT

10

ORDER OF COURT

This Appeal coming on for hearing on the 16th day of October 1980 in the presence of Mr. Selvadurai of Counsel for the Appellants and Mr. Ajaib Haridass of Counsel for the Respondent AND UPON READING the Record of Appeal filed herein AND UPON HEARING COUNSEL as aforesaid IT IS ORDERED THAT:-

1. The Appeal herein be and is hereby dismissed with Costs to be taxed and paid by the Defendants to the Plaintiff.

20

Given under my hand and the seal of the Court this 3rd day of November 1980.

Sgd. Yap Chee Leong
ASST. REGISTRAR

(Filed this 3rd day of November 1980)

No. 14
Order Granting
Leave to
Appeal to the
Judicial
Committee of
the Privy
Council - 12th
January 1981

No. 14

Order Granting Leave to Appeal to the
Judicial Committee of the Privy Council
12th January, 1981

30

IN THE COURT OF APPEAL IN SINGAPORE
CIVIL APPEAL NO. 7 OF 1980

Between

The Owners of the Ship
"August 8th"

Appellants

And

Costas Bachas

Respondent

In the Matter of Motion in Admiralty in
Rem No. 37 of 1978

In the Court
of Appeal
Singapore

Admiralty action in rem against
the ship "AUGUST 8TH"

No. 14
Order Granti
Leave to
Appeal to th
Judicial
Committee of
the Privy
Council - 12
January 1981
(cont'd)

Between

COSTAS BACHAS

Plaintiff

And

THE OWNERS OF THE SHIP
"AUGUST 8TH"

Defendants

10

ORDER OF COURT

CORAM: THE HONOURABLE THE CHIEF JUSTICE;
THE HONOURABLE MR. JUSTICE KULASEKARAM;
and
THE HONOURABLE MR. JUSTICE A.P. RAJAH

IN OPEN COURT

20

UPON MOTION preferred unto the Court this
day by Mr. Yang Lih Shyng of Counsel for the
Appellants AND UPON READING the Affidavit of Yang
Lih Shyng filed herein on the 29th day of October,
1980 AND UPON HEARING Counsel for the Appellants
and for the Respondent IT IS ORDERED that:-

30

1. The Appellants be at liberty to appeal to
the Judicial Committee of Her Britannic Majesty's
Privy Council pursuant to Section 3(1) of the
Judicial Committee Act (Cap. 8) against the whole
of the decision of the Court of Appeal given on the
16th day of October, 1980.

2. Execution on the Judgment dated 16th October,
1980 be stayed pending the outcome of the appeal
to the Privy Council.

3. The costs of and incidental to this
application be costs in the cause.

Dated the 12th day of January, 1981.

Sgd. Ng Peng Hong

Asst. Registrar.

(Filed this 20th day of January, 1981)

Appeal No. 17 of 1981

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL

IN THE COURT OF APPEAL IN SINGAPORE
CIVIL APPEAL NO. 7 OF 1980

BETWEEN :

THE OWNERS OF THE SHIP
"AUGUST 8TH" Appellants

- and -

COSTAS BACHAS Respondent

In the Matter of Motion in Admiralty in Rem
No. 37 of 1978

Admiralty action in rem against
the ship "AUGUST 8TH"

Between

COSTAS BACHAS Plaintiff

And

THE OWNERS OF THE SHIP
"AUGUST 8TH" Defendants

RECORD OF APPEAL

Ince & Company,
Knollys House,
11 Byward St.,
London E.C.3.

Solicitors for the Appellants