

## **Bankers Trust International v Todd Shipyards Corpn, The Halcyon Isle**

[1981] AC 221, [1980] 3 All ER 197, [1980] 3 WLR 400, [1980] 2 Lloyd's Rep 325, 124 Sol Jo 479

**Court:** PC

**Judgment Date:** circa 1981

### **Catchwords & Digest**

#### **SHIPPING AND NAVIGATION - LIENS ON SHIPS, FREIGHT AND CARGO - RANKING OF LIENS - IN GENERAL - MARITIME LIENS -- LIEN NOT A RECOGNISED MARITIME LIEN BY ENGLISH OR SINGAPORE LAW -- PRIORITY -- MORTGAGEE HAVING PRIORITY UNDER LAW OF SINGAPORE OVER CLAIM OF REPAIRER IN DISTRIBUTION OF PROCEEDS OF SALE OF SHIP**

The appellants, an English bank, held a mortgage on a British ship dated 27 April 1973 and registered in London on 8 May 1974. In March 1974 the respondents, who were ship repairers in New York, executed repairs to the ship in New York under a contract made in New York. The repairs were not paid for and under United States law the repairers were entitled to a maritime lien for the price of the repairs to the ship. Following the repairs the ship sailed to Singapore where both the appellants and the respondents brought actions in rem in the High Court against the owners of the ship. The appellants claimed the amount due under their mortgage and the respondents claimed the amount of the repairs. Both obtained judgment on their claims. The ship was arrested in Singapore waters and subsequently sold by order of the court, the sum received being insufficient to meet in full the claims of the creditors of its owners. The appellants sought the determination of the court on the question of priority of payment to the creditors. Under the law of Singapore a claimant who had a maritime lien under the law of Singapore had priority over a mortgagee, but ship repairers did not have a maritime lien for repairs executed in Singapore and could not therefore claim priority over a mortgagee. The respondents contended that they were entitled to priority over the appellants on the ground that the maritime lien conferred on them by United States law was a substantive right in the ship to which the law of Singapore should give effect in determining the priority of competing judgment debts. The High Court of Singapore gave judgment for the appellants but the Court of Appeal in Singapore reversed that decision. The appellants appealed to the Privy Council, contending that the courts of Singapore, applying the *lex fori*, should determine the priority of competing judgment debts in accordance with the nature of the claims and since the claim of the respondents was that of a *necessaries man*, which by the *lex fori* ranked after the claim of a mortgagee, the appellants' claim had priority over the respondents' claim. The law of Singapore on this issue was the same as English law: Held (Lord Salmon and Lord Scarman dissenting) questions as to the right to proceed in rem against a ship as well as priorities between competing claimants in the distribution of the proceeds of its sale in an action in rem were questions of jurisdiction which in principle fell to be determined by Singapore law as the *lex fori*. Since under English rules of conflict of laws maritime claims were classified as giving rise to maritime liens which were enforceable in actions in rem in English courts only if the events on which the claim was founded would have given rise to a maritime lien in English law if those events had occurred within the territorial jurisdiction of the English court, the question whether a *necessaries man* was entitled to priority over a mortgagee in the proceeds of sale of a ship depended on whether, if the repairs to the ship had been done in Singapore, the repairer would have been entitled under the law of Singapore to a maritime lien on the ship for the price of them. Since a ship repairer did not have a maritime lien on a ship for repairs executed in Singapore it followed that the appellants as mortgagees were entitled to priority. The appeal would therefore be allowed.

Per Lord Diplock, Lord Elwyn-Jones and Lord Lane: A maritime lien continues to be enforceable by an action in rem against the ship in connection with which the claim that gave rise to the lien arose, notwithstanding any subsequent sale of the ship to a third party and notwithstanding that the purchaser had no notice of the lien and no personal liability on the claim from which the lien arose, this being a characteristic pointing to a

maritime lien partaking of the nature of a proprietary right in the ship.