

**Owners of the Carbonnade v Owners of the Ruta
sub nom The Ruta**

[2001] 1 All ER 450, [2000] 1 WLR 2068, [2000] 1 All ER (Comm) 847, [2000] 1 Lloyd's Rep 359, [2000] ICR 1024, [2000] 12 LS Gaz R 39

Court: Admlty Ct

Judgment Date: 11/02/2000

Catchwords & Digest

ADMIRALTY - PRACTICE OF THE HIGH COURT - COMMENCEMENT OF ACTIONS IN REM - RANKING AND PRIORITY OF MARITIME LIENS - COMPETING DAMAGE AND WAGES CLAIMS AGAINST FUND - WHETHER DAMAGES CLAIM HAVING PRIORITY OVER WAGES CLAIM - DAMAGES CLAIMANT ENFORCING SECURITY BY ARREST BUT VESSEL BEING RE-ARRESTED - WHETHER CLAIM HAVING EQUAL RANKING WITH OTHER DAMAGES CLAIMS AFTER ARREST AND RE-ARREST.

R, a small cargo vessel, collided with three yachts lying at anchor, C, S and L. C sank and was rendered a constructive total loss. S and L were less severely damaged. Subsequently, a new crew took over R. R was later arrested in Ireland at the instance of M, who were the managers of the vessel and also mortgagees. The owners of L thereupon issued a caveat against release and took over the arrest of the vessel from M. Security was put up by R's P&I club and the vessel was released, but it was arrested again in France at the instance of the owners of C and S. By that stage the hull underwriters of R had gone into liquidation and the club refused to furnish security in their stead. R was accordingly released from arrest with a view to completing a laden voyage to England, thereby earning freight. R was re-arrested in England and eventually sold. In the meantime a substantial backlog of unpaid crew wages had built up. Some of the crew were paid off by the owners of C and S, although the remainder joined another vessel and claimed their outstanding wages in their own right. The owners of L, having obtained default judgment, sought to enforce the judgment against their security, having learned that provisional liquidators had been appointed to the guarantor company, contending that they were entitled to a maritime lien for damage. The entire net fund would have been absorbed by the claims of C and S unless the wages claim had priority over them. Accordingly, the issue arose as to whether a damage claimant had priority over a wages claimant or vice versa. The issue also arose as to the priority of L's claim, namely whether the maritime damage lien survived the release from arrest, thus entitling the owners to proceed in rem against the proceeds of sale. *Held* The court ruled: (1) Questions of priority of competing maritime lien claims were not capable of being compartmentalised in the form of strict rules of ranking. While it could be highly significant, in the instant case, neither creditor could pray in aid some status as a preserver of the res. Considerations of public policy, namely the interests of mariners and the promotion of safe navigation, were evenly matched. The contrast between the voluntary nature of the wages lien and the involuntary nature of the damage lien was not decisive; once engaged, the seaman had no option but to continue to volunteer his services. The instant case was not one where the damage lien was attributable to the negligence of the crew claimants, as apart from their non-involvement in navigational responsibilities, they joined the vessel after the collisions. The decisive factor in the instant case was the fact that the wages claimants had no alternative form of redress, as the owners of R were insolvent. (2) In the exercise of the court's discretion, it was appropriate for the claim of the owners of L against the proceeds of sale to have the same priority as that of the owners of C and S. The security obtained by the owners of L was insufficient to cover the costs element. The level of dividend the unsecured creditors of the P&I club could have expected was minimal. All three collisions occurred on the same day in the same incident. It would therefore have been unfair to have accorded priority to one claim over the others.

Cases considered by this case

Annotations: All Cases **Court:** ALL COURTS

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Treatment	Case Name	Citations	Court	Date	CaseSearch
Considered	Wild Ranger, The	(1863) Brown & Lush 84, 2 New Rep 402	pre-SCJA 1873	circa 1863	CaseSearch Entry
Considered	Linda Flor, The	(1857) 4 Jur NS 172, Sw 309, 6 WR 197, 30 LTOS 234	pre-SCJA 1873	circa 1857	CaseSearch Entry