

MARITIME LAW REGISTRIES IN SOUTH AFRICA AND GREECE.

Transactions to be registered, legal effects of registration.

FACULTY OF LAW, UNIVERSITY OF CAPE TOWN

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A dissertation presented to the Faculty of Law, University of Cape Town, in partial fulfilment of the requirements of the degree of Master of Laws in approved courses and a minor dissertation.

The other part of the requirements of this degree was the completion of a program of courses.

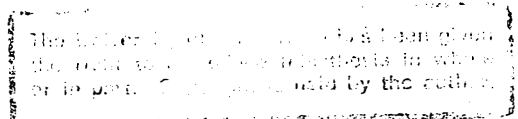
DECLARATION

I declare that this dissertation is my own, unaided work. It is being submitted for the degree of Master of Laws at the University of Cape Town, South Africa.

It has not been submitted before for any degree or examination to any other University nor has it been prepared under the aegis or with the assistance of any other body or organisation or person outside the University of Cape Town.

Athens, 3-10-1994

Sokratis Kavadias



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I. INTRODUCTION

The importance of ships to a nation, either in peace or war time is great and has been recognised since early times.

The fact that ships and seamen, wherever they come from, or to whichever nation they belong, are exposed to the same dangers and are dealing with the same problems, has made maritime law uniform. This system of law has been one of the few, if not the only one that has been uniform for a period of thousands of years. Its rules were formed by the customs of the sea and the effort of seamen to overcome their common problems with the result that, although the political and social circumstances on land changed very often, the principles of maritime law remained unchanged.

The independence of the maritime law from the law of the land is succinctly shown by an anecdote in the Roman digest, which reads "*a certain man brought a case about shipwreck to the emperor Antoninus, for decision; but the emperor replied: 'I am indeed the supreme lord of the land. But custom is the lord of the sea. Let this case be decided by the sea law of the Rhodians, which our law accepts.'*"¹

It is not unusual that legal systems with different general principles have similar provisions in the field of maritime law which, sometimes, are peculiar only to maritime law.²

The distinction between movable and immovable things is common in most legal systems and in all legal systems with Roman law origin. However, although *ex definitio* movables, ships enjoy a special status which pertains more to that of immovables.

¹ see WIGMORE p. 879

² One example is the opportunity given to a ship owner to limit his liability according to the value or the tonnage of his ship (in Greek law s. 85f of the CPrML, and in German law §607a of the HGB).

As with most special branches of law, if not with all, as soon as a person enters the field regulated by these special rules, he cannot avoid their application. The only freedom given to a person is to decide whether he is going to undertake the activities regulated by that special branch of law. Once he does so, then he can no more control their application.³

This paper will attempt to show that as far as ships are concerned the decisive moment for the application of shipping law is the moment of registration which gives the vessel the legal status of a ship and so enables her to trade as such (or to be used for other purposes).

South African and Greek law will be examined and some references will be made to German law.

³ These branches of law usually regulate the rights and obligations of persons belonging to different professional groups. They are not part of the general civil law, but a clear distinction between them and civil law is very often not possible. One reason is that they are not autonomous and they need to be supplemented by civil law. Apart from that, the fact that their provisions apply only to a certain category of persons is not decisive. In most cases, the application of law is triggered by an act of a person. The fact that not all persons are in shipping business does not explain why shipping law is a special branch of law, especially if one thinks that e.g. family law is part of civil law although not all persons are married. The argument that every person can e.g. get married and so be subject to the provisions of family law applies equally to everybody that can, if he wants so, embark on shipping business.

The most satisfactory explanation seems to be that the distinction has historic origins. See MEDICUS para. No.14

II. HISTORY OF REGISTRATION

At this point it might be convenient to deal briefly with the concept of registration in different periods in time.

In ancient times, the trade in an area was usually dominated by one State or city and its allies and there was no space for rivals. This made the verification of the national character of vessels easy.

In ancient Athens, the legal system and the court rules were rather developed, but there was no connection between the origin of a ship and the jurisdiction of the admiralty court.⁴ While in all other matters the Athenian courts would look at the origin of the litigants in order to exercise jurisdiction (except in cases where there was a special agreement between two cities), in maritime cases the only criterion was whether the ship was engaged in trade with Athens or not.⁵ In case of a dispute over a contract the locus contracti was immaterial, provided that the contract was in some way connected with Athens.⁶ This would very often be the case as the grain trade was prohibited, unless at least two thirds of the cargo were brought in the city.⁷

The fact that the origin of the vessel was not significant for the legal relations of the vessel made the registration unnecessary at the time.

Later, in the laws of the Roman Empire, the concept of registration appears.⁸ This formality was most probably introduced because the empire extended over vast areas of land and was comprised by people

⁴ This was a special tribunal adjudicating cases between sea merchants. The preliminary proceedings took place during summer and the hearing during winter when the ships could not go to sea. See generally COHEN.

⁵ *ibid.* at p.59

⁶ *ibid.* at p.112

⁷ *ibid.* at p.68

⁸ see READY p.3 with further references. (Unfortunately I have been unable to find the books referred to and get more information about registries in Roman times.)

of many different nationalities, fact which made the nationality of ships not readily ascertainable.

In medieval Europe, registration of ships was an important part of the legislation of the Italian towns.⁹

At that time, maritime law was contained in certain bodies of local customs. One of these bodies were the judgements of Oleron, which originated in the laws of the commune of Oleron. It was this body of customs that was adopted by England and inserted at a later date in the Black Book of Admiralty.¹⁰

The first time the concept of registration was introduced in England was with the third Navigation Act in 1660 (12 Car.2 c.18 s. 10).¹¹ This act required foreign ships, British owned,¹² to be registered. It was partly repealed by the 7&8 Will. 3. c.22, s. 17 of which required only British or plantation-built ships, British owned, if intended to be employed in the plantation trade, to be registered. In the late 18th and early 19th century many acts¹³ were passed dealing with registries and all provided that the property in ships can only be obtained and transferred through the medium of a public register. The right to

⁹ see READY p.3 with reference to HOLDSWORTH, vol.5, p.73

¹⁰ see HOLDSWORTH vol.1, p. 527

¹¹ see ABBOTT 13th edition p. 72 fn. a

¹² The words "foreign ships, British owned" appear in the 8th, 13th, and 14th edition of Abbott. Most probably mean "foreign built ships, British owned".

¹³ The main Acts passed in that time were:

- ◆ 26 Geo. 3 c.60 An Act for the further Increase and Encouragement of Shipping and Navigation. (1786)
- ◆ 34 Geo. 3 c.68 An Act for the further Encouragement of British Mariners; and for other Purposes therein mentioned. (1794)
- ◆ 4 Geo. 4 c.41 An Act for the registering of vessels. (1823)
- ◆ 6 Geo. 4 c.109 An Act for the Encouragement of British Shipping and Navigation. (1825)
- ◆ 6 Geo. 4 c.110 An Act for the registering of British Vessels. (1825)
- ◆ 3&4 Will. 4 c.54 An Act for the Encouragement of British Shipping and Navigation. (1833)
- ◆ 3&4 Will. 4 c.55 An Act for the registering of British Vessels. (1833)
- ◆ 8&9 Vict. c.89 An Act for the registering of British Vessels. (1845)

For extracts of these Acts see the Appendix.

register was confined at the time to British subjects and expanded some years later by s. XI of 4 Geo. 4 c.41 to include denizens and naturalised persons. The 1854 MSA retained the same principles with regard to qualified persons but introduced a change with regard to the transfer of ownership. According to s. 55 of the 1854 MSA, a registered ship or share therein had to be transferred by a Bill of Sale. However, the BoS had to contain a description of the ship as may be sufficient to identify the ship to the satisfaction of the registrar.

The obligation to register under the former acts was replaced with an entitlement to register under the 1988 MSA.

This Act imposed certain conditions for the registration of fishing vessels in England. Among these were that the owner should have British nationality, should be resident in England and that the vessel had to be managed from within the UK. These provisions were challenged by Spanish owners and the matter was referred by the Q.B. to the European Court of Justice, which held that the 1988 MSA and the Regulations issued thereunder were not in conformity with the EEC treaty.¹⁴

The new British Act (1993 MSA) which came into force on the 21st March 1994 prescribes that ships will be entitled to register and fly the British flag if the majority of the shares in them is owned by a qualified person.

The circle of qualified persons has been extended by the Act to include bodies corporate incorporated in a European Community member State and European Economic Interest Groupings formed in pursuance of Art. 1 of the Council Regulations (EEC) No2137/85(b) and registered in the UK.¹⁵

¹⁴ see the decision of the Court of Justice of the European Communities No C-221/89 'REGINA v. SECRETARY OF STATE FOR TRANSPORT *ex parte* FACTORTAME LIMITED and others', in Common Market Law Reports vol.62 (12) November 1991 part 838 p.589 at p.625 §17, p.627 §§20-23 and pp.627-628 §§27-31. A summary of this decision is published in the British Yearbook of International Law vol.62 1991 pp.526-528.

¹⁵ see LMCQ 1994, p.154

At the present time, the principle of registration can be found in the maritime law of all countries. It is noteworthy, that the concept of a ship plying between different ports although unregistered, seems to be unknown or even absurd to all maritime law enactments, municipal or international, and to all writers.

III. REGISTRATION IN INTERNATIONAL LAW

The principles of international law seem to support the view that registration is essential for the application of maritime law and also that the registration enables the ship to follow its commercial purpose.

Lauterpacht¹⁶ writes that *"it appears also that if a vessel wishes to enjoy the freedom of the sea, it can only have this right adequately protected if it sails under the flag of a particular State."*

According to Hall,¹⁷ States have in respect of vessels flying their flag *"protective jurisdiction to the extend of guarding the vessel against interference of any kind on the part of other powers."*

In the 'ASYA'¹⁸ case it was held that *"for the freedom of the open sea, whatever these words may connote, is a freedom for ships which fly, and are entitled to fly the flag of a State which is within the comity of nations. The Asya did not satisfy this elementary conditions. No question of comity nor of any breach of international law can arise if there is no State under whose flag the vessel sails."*

The 1955 Nottebohm case,¹⁹ established the principle that a State is unable to exercise protective jurisdiction over its nationals if its nationality is granted to them although they have no genuine connection with that State.²⁰

¹⁶ in OPPENHEIM'S International Law 8th ed. 1955 p.595

¹⁷ see HALL p. 307

¹⁸ 'NAIM MOLVAN, OWNER OF THE MOTOR VESSEL ASYA v. ATTORNEY GENERAL FOR PALESTINE' (1948 A.C. 351) at p.369. The ASYA was captured on the High Seas carrying on board illegal immigrants. At the time she was first seen, she was flying no flag and later she hoisted a Turkish flag. When a boarding party arrived at the vessel, the Turkish flag was hauled and a Zionist flag hoisted. The vessel had no passenger list nor any papers.

¹⁹ see ICJ Reports 1955 p.4

²⁰ *"On the other hand, a State cannot claim that the rules it has thus laid down are entitled to recognition by another State unless it has acted in conformity with this general aim of making the legal bond of nationality accord with the individual's genuine connection with the State which assumes the defence of its citizens by means of protection as against other States."* (at p.23)

The 1958 Geneva Convention on the High Seas provides in art. 5 para. (1) that there must exist a genuine link between the ship and the State whose flag the ship is entitled to fly.

Because of the similarity of the terms genuine connection and genuine link, which of course was not coincidental, there was an effort to apply the principle of the *Nottebohm* case to vessels,²¹ but the International Court of Justice rejected that principle in its advisory opinion for the constitution of the maritime safety committee of IMCO.²² Apart from that, it can be argued that the criteria adopted²³ in the *Nottebohm* case can, for practical reasons, only apply to persons and not to ships.²⁴

In international law it is established that a State cannot question the validity of the sovereign acts of another State which were undertaken in the other State's territory. Unfortunately, the situation with the registration of a vessel is not so straightforward. The granting of a flag to a vessel plying between international ports is an act which inevitably needs to be recognised by other States. It is submitted that art. 5(2) of the 1958 Convention is *lex imperfecta*²⁵ because it does not provide a solution in case a ship has no genuine link with the State in which she is registered.

²¹ see BOCZEK p.116-117 with further references

²² see ICJ Reports 1960 p.150 (at p.169 - 170)

²³ see ICJ Reports 1955 at p.24

²⁴ The Court stated (at p.22) that the relevant decisions of municipal courts referred only to cases of dual nationality. In case of ships one usually deals with the recognition of single nationality.

The Court further held: "*Different factors are taken into consideration, and their importance will vary from one case to the next: the habitual residence of the individual concerned is an important factor, but there are other factors such as the centre of his interests, his family ties, his participation in public life, attachment shown by him for a given country and inculcated in his children, etc.*" (at p.22)

And at p.23 "*According to the practice of States, to arbitral and judicial decisions and to the opinions of writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties.*"

²⁵ see SKOURTOS p.26

With regard to that problem, it must be accepted that a State does not have an obligation to recognise the validity of foreign sovereign acts in its own territory, because otherwise it would be surrendering (at least partly) its sovereign rights.²⁶

The convention does not contain any provision dealing with rights of States against ships without nationality and so it refers to general principles of international law, which, in turn, must be taken to be those set out in the 'Asya' case.

In practice, States do recognise the granting of nationality by other States, unless such granting is clearly illegal from the point of view of international law.²⁷ Given that ships, according to art. 6 para. (2) of the 1958 Convention on the High Seas, cannot have dual nationality, an example of a clearly illegal registration is when a ship was formerly flying the flag of a State and later was granted the nationality of another State without first being properly deleted.²⁸

This problem has two sides. On the one hand, a State should not be able to register under any circumstances a vessel which is already registered in another State, because this would give a good opportunity to wily ship owners to avoid any jurisdiction in which they have debts or any other obligation. On the other hand, the register State should not be able to 'blackmail' a ship owner in order to delete a vessel from its register.

In order to maintain a balance between the two sides and reserve their unfettered discretion to register vessels, South Africa and Greece have no statutory provision requiring a certificate of deletion before the new registration. The inconsistency is in both States set aside in administrative level by the registrar, who can require the certificate

²⁶ see SKOURTOS p.40

²⁷ see SKOURTOS p.42, WHITEMAN_vol.9, p.2 (mainly for the practice of the US)

²⁸ see SKOURTOS p.43, WHITEMAN_vol.9, p.2 (citing Oppenheim 7th ed. 1948, p.546) In this case most States would require a certificate of deletion before registering a vessel. However, the non deletion should not preclude third States from recognising the new registration and nationality.

although it is not prescribed by law.²⁹ If he does so, the applicant can probably circumvent the problem by referring the matter to a court, which will find itself unable to follow an administrative practice not based on a statutory provision.

A similar practice is followed in the US which has firmly maintained that the regularity and validity of a registration can only be questioned by the registering State.³⁰ The attitude of the US is very significant for the formation of international customary law.

In bilateral agreements for commerce and navigation in the mid-19th century, one can only find provisions which make the recognition of the ship's nationality dependent on the existence of certain connecting factors between the vessel and the State. Towards the end of that century these provisions became progressively rare and in the present century have almost disappeared. In their place, one can only find provisions which make the recognition dependent on the regularity of the registration and the conformity with the municipal laws of the registering State.³¹

²⁹ In practice, the Greek registrar does not require this certificate in order to facilitate the registration of ships under the Greek flag. In the opposite case, where the owner needs a Greek certificate of deletion in order to register his vessel under another flag the Greek legislation takes a different view and places greater weight on the certificate. (see *infra* p.68)

³⁰ see WHITEMAN vol.9, p.1, 15

³¹ see SKOURTOS p.50

IV. DEFINITION OF SHIP

A. South African Law

According to s. 2(1) of MSA, ship means any vessel used for transportation or any other purpose on or under the surface of the water.

The same section defines vessel as including any ship, or any boat, small vessel or other description of vessel used or designed to be used in navigation.

AJRA defines ship as any vessel used or capable of being used on the sea or internal waters, and includes any hover craft, power boat, fishing boat, submarine vessel, barge, crane barge, floating crane, floating dock, oil or other floating rig, floating mooring installation or similar floating installation, whether self propelled or not [AJRA s. 1 (i) (vii)].

A definition of ship can also be found in other South African Acts.³²

The earliest moment when a vessel can be characterised as "ship" in terms of the MSA is when it is actually used for some purpose on or under the surface of the water. According to AJRA when the construction has reached a stage where the vessel can be so used. Another possible interpretation is that the capability of a ship to be used is not only in a technical sense but also in a practical sense. The spirit of MSA indicates that a ship cannot be used as such unless

³² The Sea Fishery Act 12 of 1988 defines 'fishing boat' in s. 1 as any vessel which is used by a fisherman for catching fish or which is used for the transport or processing of fish caught by a fisherman; and 'vessel' as any water-navigable craft of any type whatsoever, whether self-propelled or not.

The Prevention and Combating of Pollution of the Sea by Oil Act 6 Of 1981 defines ship as any kind of vessel or other sea-borne object from which oil can be discharged, excluding a tanker, whether or not such vessel or object has been lost or abandoned, has stranded, is in distress, disabled or damaged, has been wrecked, has broken up or has sunk;

These definitions will not be referred to in this paper, firstly because they seem to presuppose the MSA definition and secondly because they are merely describing a specific use or characteristic of ships, significant only for the purposes of these acts.

registered. Most probably, the legislator did not intent to give that meaning to the provision,³³ but nevertheless such an interpretation is within the meaning of the Act. It is worth to notice that in most cases the registration is not dealt with, it is taken for granted.

The definitions of ship in MSA and AJRA refer to ships used or at least capable of being used as such and so excludes ships under construction. The definition of vessel includes ships under construction (designed to be used).

These definitions do not make a distinction between registered and unregistered ships. The MSA provides which ships have to be registered but has no provision regulating what is to happen if a vessel is not registered.

The fact that the Act does not specifically impose a fine or penalty to persons that do not register but simply contains a general provision to make the non registration an offence [ss. 312 & 313 (1)] shows that a contravention of the relevant provisions is not counted to defeat the purpose of the Act³⁴ and suggests that the person concerned is loosing some privileges by not registering his title.

It is possible that the purpose of the Act is not defeated simply because the Act does not apply at all on unregistered ships. The Act does not contain a provision regulating its application to registered or unregistered ships,³⁵ but it does not seem to recognise ships that are

³³ In the Assembly Debate on the 24th of May 1951 for the passing of the MSA (see HANSARD vol.76 pp.7597 - 7639 and pp.9262 - 9297), there were only sporadic references to registration, none of which dealt with a possible connection with ownership. Reference was made merely to the fact that for the first time in the history of South Africa, the S.A. flag would be the marine flag of S.A. (p.7603).

At p.7608 Dr. V.L. SHEARER put forward the problem of transferring of ships from the S.A. flag, especially during time of war, and proposed that the Government should have the opportunity to insist that the ships stay under S.A. flag also in times of national emergency. (p.7609)

The Minister of Finance (who at the time administered the Act) did not take a position on the point, and merely said that it would be out of place to deal with such a question in this Bill. (p.7636 - 7637)

³⁴ See 'WYLOCK v. MILFORD INVESTMENTS Pty Ltd' 1962 (4) SA 298 at 312 A-C

³⁵ The Act merely contains a provision for its geographical application:

not registered although they should be. The reference in many sections to "ships registered in the Republic"³⁶ is made merely in contradistinction to ships registered elsewhere. The spirit and the letter of the Act indicate that its provisions are not applicable to non registered ships. Section 27 subs.(1) provides that the name of the master must be endorsed on the certificate of registry, and subs. (2) provides that "*the proper officer at any port in the Republic may refuse to permit any person to do any act there as master of a South African ship unless such person's name is inserted in or endorsed on the certificate of registry as the last appointed master of that ship.*" This shows that an unregistered ship cannot have a master and so cannot be used as a ship. Section 63 provides that a ship cannot proceed to sea without clearance from an officer of customs which can only be obtained after the master of the ship states the name of the country to which he claims that the ship belongs.³⁷

Apart from these there are provisions in the Act³⁸ referring to the name of a ship or the registered tonnage which make it practically difficult or even impossible for an unregistered ship to be used according to its financial purpose.

S. 3 sub. (4) - Unless otherwise indicated, those provisions of this Act which apply to vessels which are registered or licensed in the Republic or which in terms of this Act are required to be so registered or licensed shall so apply wherever such vessels may be.

³⁶ E.g. in the definition of a SA ship in s. 2(1), and in s. 7 which provides that a surveyor can inspect a SA ship wherever it may be. The reference appears also very often in the chapters dealing with safety and load lines.

³⁷ The registration is considered to be evidence of nationality. Although in some cases it might not be conclusive, (i.e. when a State considers only its nationals to be qualified to own ships flying its flag) it is enough for the purposes of the Act. The section does not require proof of nationality; the master has merely to **state** the name of the country to which he **claims** that the ship belongs. (my emphasis)

³⁸ See s. 2(1) (definition of register tonnage), s. 188 (the register tonnage must be cited in the crew list), s. 262 (for purposes of limitation of liability the tonnage shall be the gross register tonnage), s. 21 (ship's name must be entered in the register) s. 38 (a ship shall only be described by its name as it appears in the register)

B. Greek Law³⁹

Section 1 of the Code of Private Maritime Law⁴⁰ defines ship as any vessel,⁴¹ with a net tonnage of at least 10 tons designed to travel on the sea⁴² by its own means of propulsion.⁴³

In order to be characterised as ship, a vessel must have all of these attributes. If she loses one of them, she loses the character of a ship. However, a merely temporary loss does not affect the characterisation.⁴⁴

According to s. 3 of the Code of Public Maritime Law,⁴⁵ ship is any vessel designed to travel on the water in order to carry persons or cargo, or for purposes of towage, salvage, fishing, recreation, scientific research or other purpose.⁴⁶

This definition is applied when public law provisions are to be applied on ships.⁴⁷

A ship is a movable. The former law contained an explicit provision to that effect,⁴⁸ but in the code of private maritime law the provision

³⁹ In Greek law there are two main statutes regulating maritime matters. The Code of Private Maritime Law which regulates the mercantile aspects of shipping (e.g. charterparties, BoL, liabilities, liens, labour Law, etc.) and the Code of Public Maritime Law, which regulates public law aspects of shipping (e.g. nationality of ships, measurement, vessel's certificates and papers, crew requirements, powers of the master, port police etc.).

⁴⁰ Statute 3816/1958, hereinafter referred to as CPmL. In Greek Κώδιξ Ιδιωτικού Ναυτικού Δικαίου.

⁴¹ A vessel is a convex-shaped construction and therefore any flat construction (e.g. a raft) is not regarded as a ship. See DELOUKAS, ch.28 a, p.66 KIANTOU - PABOUKIS ch.6 I, p.24-26

⁴² There is no distinction between floating on or under the surface of the sea. A submarine is regarded as a ship as long as its buoyancy can be adjusted. The reference to the sea means that vessels travelling in navigable internal waters are not regarded as ships. See DELOUKAS ch.28 c, p.66-67, KIANTOU - PABOUKIS ch.6 I, p.24-26

⁴³ The element of use in order to make profit which was required by the former law ΓΥΓ/1910 has not been re-enacted in the CPmL.

⁴⁴ see KIANTOU - PABOUKIS ch.6 I, p.26, and also the decision of the A.P. No 137/1964, which affirmed the decision of the Court of Appeal No 2492/1962

⁴⁵ Legislative Decree 187/1973, hereinafter referred to as CPuML. In Greek Κώδιξ Δημοσίου Ναυτικού Δικαίου.

⁴⁶ The three main differences from the private law definition are that there is no tonnage limit, no distinction between ships going to sea or any other waters and no reference to own means of propulsion.

⁴⁷ see fn 39

was not repeated because it was considered to be superfluous and because it has been made clear by s. 948 of the Civil Code.⁴⁹

C. German Law

In Germany there is no statutory definition of a ship, and the task is left to writers and to the decisions of the Courts. The Federal Court of Germany (Bundesgerichtshof) has defined a ship as any floating convex shaped vessel of not insignificant size whose purpose brings with it that it travels on water. However, given that the decisions of the Courts in Germany are not of binding but merely of persuasive authority, another definition, given by a writer, seems to be preferred.⁵⁰ According to it, a ship is a convex shaped floating vessel of not insignificant size, which is capable and destined to be moved on or under the surface of the water and carry persons or things. The question whether a vessel is a ship or not is (mainly for the smaller vessels) a question of fact. In order to be decided one must take into consideration the degree in which the vessel can endanger third persons⁵¹ and consequently give rise to liabilities which must be looked at and determined according to the mercantile shipping law.

The registration does not play a role for the characterisation of a vessel as a ship and it seems not to be important for the commercial use of the ship. For a more detailed approach on that point see *infra* p.57

⁴⁸ Section 227 of the former Mercantile Law Code.

⁴⁹ The Civil Code is the main civil law statute in Greece. It came into force after the former maritime law code (statute ΓΥΙ'Ζ/1910) and before the maritime law code today in force (statute 3816/1958). For the text of s. 948 see the Appendix.

⁵⁰ See SCHAPS - ABRAHAM, Vor §476, 1: "ein Schiff ist danach ein schwimmfähiger Hohlkörper von nicht ganz unbedeutender Größe, der fähig und bestimmt ist, auf oder auch unter dem Wasser fortbewegt zu werden und dabei Personen oder Sachen zu tragen", also PRÜSSMANN - RABE, Einf. IA 1.

⁵¹ See PRÜSSMANN - RABE, Einf. IA 1 b.

V. REGISTRY AS A MARITIME CLAIM APPLICABLE LAW⁵²

1. General

Although the registration seems to be very significant for the application of maritime law, it is not clearly a maritime matter by virtue of a statutory provision.

The AJRA gives in section 1 a list of maritime claims. Registries or any other matter connected therewith are not referred to directly as maritime claims, but it seems possible that these matters fall under some of the provisions of the Act.

Section 1(iv)(ee) of the AJRA gives jurisdiction to the Admiralty Court "for any other matter which by virtue of its nature or subject matter is a marine or maritime matter."

This provision must be interpreted to include all matters regulated by the South African Merchant Shipping Act and therefore also registries, especially if the registration is held to lead to the application of the MSA.⁵³

Section 1 (iv) (a) declares any disputes concerning the ownership in any ship or share therein to be a maritime claim. The registration can be connected with the ownership in two ways. The first is the effect of registration on the transfer and also on the protection and recognition of ownership and the second is the conclusiveness of the certificate of registry as evidence of ownership. It is possible that the ownership can be looked at from different points of view for different purposes.⁵⁴

⁵² The Greek law does not present a similar problem in this regard. Therefore in this chapter only South African law will be examined.

⁵³ see supra Ch. 4 "DEFINITION OF SHIP"

⁵⁴ An analogy can be drawn from the transfer of ownership in immovable property. The Deed of Sale of immovable property is the instrument entitling the purchaser to register the right

AJRA further provides in s. 1 (iv) (dd) that any matter in respect of which a court of admiralty in the Republic referred to in the Colonial Courts of Admiralty Act 1890 was empowered to exercise admiralty jurisdiction immediately before the commencement of AJRA is also a maritime matter. The Act in that case uses the words "was empowered to exercise jurisdiction" while in all other cases employs the words "exercised jurisdiction". This difference implies that in order to decide whether a certain matter is a maritime matter one must try to ascertain whether the court had jurisdiction, although the other courts may have not allowed it to exercise that jurisdiction. It is also possible, that a matter belonging to the jurisdiction of the Admiralty Court was usually adjudged by other courts as a matter incidental to the case before them, and consequently the relevant decisions are given by courts other than the Admiralty Court.⁵⁵

The effect of this provision is that if the pre-1890 law conferred jurisdiction to the admiralty court for cases connected with the register then these matters must be considered to be maritime claims.

The wording of that provision is the same with the wording of s. 6 of the same Act and therefore the categorisation of registries as maritime matters according to this provision has a special significance because it is in respect of the same matters that English law applies.

A problem that arises is that if registries are held to be maritime matters only by virtue of s. 1(iv)(ee) then s. 6 of the AJRA makes Roman-Dutch law applicable. It is questionable whether Roman-Dutch law has any provisions about registries (as far as I know it does not)

that he acquired and obliging the registrar to register it. The ownership does not pass without the action of the registrar (s. 16 of the Deeds Registries Act 37 of 1947).

⁵⁵ This is especially the case with disputes as to ownership, which were adjudicated by the Court of Chancery, although the Court of Admiralty had jurisdiction according to s. 4 of the Colonial Courts of Admiralty Act 1840. In most cases, questions as to the ownership were brought before the Court as matters incidental to bankruptcy.

In 1732 s. 24 of the statute 5 George II c.30 gave jurisdiction to the Chancellor in bankruptcy cases. Nearly 100 years later by virtue of s. 1 of 1&2 Will. IV c.56 and later by s. 2 of 10&11 Victoria c.102 this jurisdiction was handed over to the Court of bankruptcy. The Chancellor retained appellate jurisdiction over these matters. See HOLDSWORTH, vol.1, p.443, 470-473

because at the time of the Roman-Dutch law writers there were no registries. The concern at that time was to ascertain the nationality of ships for the application of prize law.⁵⁶

2. Registration and transfer of ownership

The British law concerning registries has undergone many changes in the period before 1890. Although there was no provision conferring general jurisdiction to the Admiralty Court over registries, it can be argued that registries were within the jurisdiction of that Court at least in two ways. The first way is that registration was essential for the passing of ownership, in respect of which the Court had jurisdiction according to s. 4 of the 1840 Act, and the second that the Court had jurisdiction to restore possession of the certificate of registry to the person entitled to the custody of it.

As already mentioned, the concept of registration was introduced to English law in 1660. The intention of the first registries acts was to confine the privileges of trade between the colonies to British ships, as far as that was consistent with the extend of it. During the reign of George the Third the trade of the country and the ship-building activity advanced to such a level as to warrant the confinement of the British trade exclusively to British ships or ships taken as prize of war.⁵⁷

The first of that series of Acts was the 26 Geo. 3. c.60. This Act required every ship or vessel having a deck, or being "*of the Burthen of fifteen tons or upwards*" to be registered (s. III). According to s. I of the Act only British-built ships were entitled to be registered with the exception of ships taken as prize. The owners of these ships were entitled to register them by producing the certificate of condemnation (s. XXV).⁵⁸

⁵⁶ The prize law refers to enemy vessels. The relevant books refer generally to enemy vessels. Probably a vessel was deemed to have the same nationality with the owner.

⁵⁷ see ABBOTT 8th ed. p.73

⁵⁸ Most of the Acts provided that, apart from British built vessels, ships condemned as prize in any Court of Admiralty could be registered as British ships. In *THE KING v. THE*

Section XVI of the same Act provided that in case of any alteration of the property in any ship or vessel, the particulars of the purchaser(s) had to be endorsed on the certificate of registry and that a copy of such endorsement had to be given to the registrar so that he could grant a certificate of registry.

The Act did not provide for any consequences on ownership if a vessel was not registered. It appears that the registration was merely the means for the participation in the trade with the colonies.⁵⁹ If a vessel attempted to exercise this privilege without first having obtained a certificate, it was forfeited (s. XXXII).

Section XVII provided that whenever the property in a British ship is transferred, the bill or other instrument of sale thereof must contain a full recital of the certificate of registry, and that otherwise such bill of sale shall be utterly null and void, to all intents and purposes.

In the decision in 'THE SISTERS',⁶⁰ Lord Stowell held that a bill of sale is the proper title to which the Maritime Courts of all countries would look.

In the case of 'ROLLESTON v. HIBBERT', which was decided under this Act the Court held that the bill of sale was void because there was

COLLECTOR AND COMPTROLLER OF THE CUSTOMS IN LONDON' English Reports vol.105 p.98 - 1 M&S 262 COURT OF KING'S BENCH Mat 6th, 1813 it was held that the exception of s. 25 of 26 Geo. 4 c. 60 applies only in cases of condemnation jure belli and not to cases of condemnation for violations of Acts of Parliament. (at 99 - 266) and that the vessel should be confiscated jure belli in order to be registered. The certificate of the Judge was held not to be conclusive evidence of the cause of condemnation of the ship. (at 100 - 267)

⁵⁹ See ABBOTT 8th ed. p.78 (p.63 old page numbering)

⁶⁰ 'THE SISTERS' English Reports vol.165 p.731 - 5 C. ROB. 155, Court of Admiralty, June 15, 1802

Lord Stowell: *"according to the ideas which I have always entertained on this question, a bill of sale is the proper title to which the Maritime Courts of all countries would look. It is the universal instrument of transfer of ships in the usage of all maritime countries; and in no degree a peculiar title deed or conveyance known only to the law of England: it is what the Maritime Law expects, what the Court of Admiralty would in its ordinary practice always require, and what the Legislature of this country has now made absolutely necessary, with regard to British subjects, by the regulations of the Statute Law. (731/732 - 159)*

no recital of the certificate of registry.⁶¹ The absence of the vessel from port was held to be immaterial.

A problem that arose with that Act was that the owner of a ship was not prevented from selling it to more than one person, especially if the ship was not at her home port at the time of the sale and so the certificate of registry could not be delivered to the purchaser. Given that equitable ownership was not recognised at the time,⁶² an owner was not prevented from selling the vessel to more than one buyer. This shortcoming was rectified by the 34 Geo. 3. c.68, which provided for the registration of the transfer.

This Act introduced the doctrine that the ownership is transferred with the registration. The following Acts adopted the same principle.

Section XIV of the 34 Geo. 3. c.68 repeated section XVII of the former act and clarified the position by enacting that there shall be no other way to transfer a vessel apart from a bill of sale or other instrument in writing.

Section XV provided that upon any alteration of property in any vessel a copy of the endorsement required to be made on the

⁶¹ ROLLESTON v. HIBBERT English Reports vol.100 p.646 - 3 T. R. 406, COURT OF KING'S BENCH November 10th, 1789

"The objection, which has been made to it, arises from the 17th section of the 26th Geo. 3, c.60, which enacts that every bill of sale of a ship, or other instrument, not having inserted in it the certificate of the registry of such ship, shall be utterly null and void to all intents and purposes. This clause is couched in the most positive terms which the language affords, and it renders such a bill of sale an absolute nullity. ... So here the title of the defendants being reduced to writing, they cannot refer to any other agreement, even though the written instrument be void by the Act. Then it was urged that this statute did not apply to the instance of transfers of ships at sea; but the words of the 17th section are general, and make no exception of such cases. And with respect to the impossibility of complying with the requisitions of the Act while the ship was at sea, on account of the certificate of the registry being on board, it is to be observed, that the parties might have extracted from the registry at the Custom House all that was necessary for this purpose." (at 649 - 412/413)

⁶² see ABBOTT 8th ed. p.62, (68 old numbering) Equitable rights could not be recognised because 'a court of equity is bound to follow the law where the public interest is concerned, and where provisions are enacted for such a purpose it must give effect to them.' ('HUGHES v. MORRIS' 1852 L.J. vol. 21 Chancery p.761) (at 765). In the decision in 'THE LIVERPOOL BOROUGH BANK v. TURNER' 1860 L.J. vol. 29 CHANCERY p.827 (at 830) the court stated that giving effect to equitable interests would be to get rid of the policy of the statute.

These rights were recognised only later by s. 3 of 25&26 Vict. c.63 (MSA 1862) (see the Appendix).

certificate of registry must be given to the person authorised to make registry and that otherwise the contract or agreement for the sale of a vessel shall be utterly null and void to all intents and purposes whatsoever.⁶³

Section XVI of the 34 Geo. 3. c.68 provided, that if a vessel is absent from her home port at the time of the transfer, a copy of the bill of sale must be given to the registrar and the certificate of registry must be endorsed as soon as the vessel comes to port, and that otherwise such bill of sale or other instrument shall be utterly null and void for all intents and purposes.⁶⁴

With regard to this section, it has been held in '*MOSS v. CHARNOCK*'⁶⁵, that "*such being the wording of the Act, the public will be most effectually served by holding, that no interest shall pass from any owner in British ships to any other, until the public has that information which is so essential to its commercial welfare: and the*

⁶³ '*WOODS v. RUSSEL*' (English Reports vol. 106 p. 1436) June 1822 Court of King's Bench Abbott C.J. held (at 1438) that the shipbuilder "*signed the certificate to enable the defendant to have the ship registered in his (the defendant's) name and by that act consented, as it seems to us, that the general property in the ship should be considered at that time as being in the defendant,...., and we think the legal effect of signing the certificate for the purpose of having the ship registered was, from the time the register was complete, to vest the general property in the defendant*".

This decision was upheld by the House of Lords in 1886 ('*SEATH v. MOORE*' 1886 AC vol. 11 p.35 H.L.) as to the principle that ownership can be transferred when a certain condition is met, but in the 1886 case there was no reference to registration. The Court held that when an instalment was paid the ownership in the ship under construction passed to the buyer.

⁶⁴ See the case of '*MONKHOUSE v. HAY*', English Reports vol.129 p.901 (June 17, 1820).

In this case DALLAS C.J. held that the assignee must take possession of the vessel as soon as it returns to port.

Also '*CROZIER v. BROWNE*' Supreme Court Cases SEARLE vol. 2 1853 - 1856 p.5 June 14, 1853

A ship was arrested in Cape Town. The master alleged that another person was the owner of the ship and therefore the arrest had to be set aside. The Court held that the transfer was invalid because it was not registered although the ship sailed often to its home port where it could have been registered.

The Court stated that they could consider no one but T. Browne as the owner, and could pay no attention to the endorsement on the register at the Custom House at Newcastle. (at p.10)

⁶⁵ '*MOSS v. CHARNOCK*' English Reports vol.102 p.422 (at p.423 - 424) This decision was upheld in '*PALMER AND ANOTHER AGAINST MOXON*' 2 M&S 42 / English Reports vol.105 p.298 (at p.51 - 301)

objects of the parties to such contract will be best consulted by allowing the longest time to comply with the requisites of the Act, so as that, which was meant to operate as a certain means of compelling men to give that information, be not destroyed or weakened. And this will be done by construing the statute as enacting, that no bill of sale or other instrument shall have any operation or effect, until the requisites imposed on the parties to the sale are complied with; and by not allowing any relation to hold good, so as to make the conveyance effectual from any antecedent time."

Section XXXV provided that the Bill of Sale or other instrument of transfer shall be of no effect until registered. This provision was repeated almost verbatim in section XXXVII of 6 Geo. 4. c.110, s. XXXIV of 3&4 Will. 4. c.55, and s. XXXVII of 8&9 Vict. c.89.

The decisions dealing with registration under these Acts confirm that the registration was essential for the transfer of ownership. In the 'BOYSON v. GIBSON'⁶⁶ case which was decided according to 3&4 Will. 4. c. 55 it was held that *"[t]he general intention of the act is to prevent the property in British ships being held by any others than those whose title appears on the register, and this will be best effected by treating a bill of sale as not in legal existence until registered."*

The requisites of the statute had to be complied with also in case of sale of the vessel by the master⁶⁷.

These two statutes were repealed by s. 1 of the 4 Geo. 4 c. 41. However, that Act adopted the same principles.

⁶⁶ 'BOYSON v. GIBSON' Law Journal Common Pleas vol. 16 p. 147, per Maule J. at p. 151

⁶⁷ 'REID v. DARBY' English Reports vol.103 p.730 - 10 East 143 COURT OF KING'S BENCH July 4th, 1808

If it is accepted that the master of a vessel has authority to sell a ship on a foreign port he must still comply with the formalities of 34 Geo. 3 c.68., because otherwise the transaction is void.

'We are of the opinion that it must be regarded as an object of registration under Lord Liverpool's Act, upon any transfer thereof between party and party: and that the forms required by the Registry Acts not having been in this case complied with, the transfer in question is on that account void.'

(per Lord Ellenborough C.J. at 735 - 157)

The statutes apply to agreements for the transfer of property in a ship, but only to such agreements as are declared by law to be valid for such purpose.⁶⁸

The situation was changed by the 1854 MSA which provided that the bill of sale is sufficient to pass the ownership. The provisions of this Act are closer to the provisions of the South African Merchant Shipping Act, and so the arguments given for connection between ownership and registration can apply equally to the 1854 MSA. Section 19 provides that all British ships must be registered, s. 46 that the name of the master must be endorsed on the certificate of registry and s. 76 that the registered owner⁶⁹ can apply for a certificate of sale. It seems possible that what the former statutes were providing explicitly, the 1854 MSA provided for in an indirect way.

According to s. 57, every transfer of property in British ships had to be registered. However, the Act does not provide what is to happen if the purchaser omits the registration. It is possible, that if the purchaser omits to register his title, the seller can sell the vessel to another person from whom the first buyer cannot claim.⁷⁰ The consequence that the ship cannot be recognised as a British ship,⁷¹ although the other requisites are fulfilled, is, at least from the point of view of ownership, insignificant.

Although it may not be in accordance with the letter of the Act, there is reason to believe that the change of the law was not fully adopted by the courts, at least as far as disputes about ownership between British subjects were concerned.

⁶⁸ see fn 72

⁶⁹ The section refers to '*any registered owner*'. A contrario one can suppose that an unregistered owner cannot apply for a certificate of sale (see also p.43)

⁷⁰ This principle was set out in 'HEATH v. CREALOCK' 1874 L.R. vol. 10 Chancery Appeals p.22, per Sir W.M. James L.J. '*The first I take it to be this, which in my opinion is a rule without exception, that from a purchaser for value without notice this Court takes away nothing which that purchaser has honestly acquired.*' (at p.33) and was upheld in 'THE HORLOCK' 1876 - 1877 Law Reports vol. 2 Probate p.243 (at p.249)

⁷¹ see 'UNION BANK OF LONDON, The v. LENANTON' 1877 - 1878 LAW REPORTS C.P.D. vol. 3 p.243 at p.247-8

There are many English decisions which hold the registry for significant as far as passing of ownership is concerned and also give it more value as evidence than the status of prima facie evidence would justify.

In the case of 'ORR V. DICKINSON'⁷² it was held that the bill of sale is the instrument which entitles the buyer to register the transaction and obliges the registrar to register it. The bill of sale must be valid and according to the law.

Similarly, in 'THE SPIRIT OF THE OCEAN',⁷³ Dr. Lushington held that it was the duty of the buyer to register and his interest also, because in that way he would complete his title, and that the effect of the bill of sale was to divest the seller from his ownership and consequently from any liability arising therefrom. In this case the purchaser of the ship is in a position where he can complete his ownership by a unilateral act. It depends upon him to do so.

On the other hand some decisions under MSA follow a different approach which is more consistent with the letter of the Act. However, it seems that these decisions refer to ownership in a somewhat different respect.

⁷² "ORR V. DICKINSON" (Law Journal 1859 vol. 28 p. 516 Courts of Chancery). WOOD V.C. held (at p. 520) that *"I can find nothing in the principle of national policy, which requires that registration shall give operation to that which is a nullity, or that when the legislature says the ship is only to be passed by a valid bill of sale of the owner, that which is no bill of sale of the owner can possibly pass it. There would be no place where you could stop if that were the policy of the law. It would be in the power of the registrar to register at any port all ships according to his fancy, or for any bribe that might be given to him by anybody. It would be very strange if any such doctrine as that could be upheld."* ... and *"[b]ut having made the registry simply in pursuance of that which was no bill of sale at all, I think the registry of sale must be treated as nullity."*

⁷³ 'THE SPIRIT OF THE OCEAN' (1865 L.J. vol. 34 p. 74 Court of Admiralty)

Per Dr. Lushington: (at p. 76) *"[w]hose duty it was to register? I apprehend it was the duty of the vendee, and his interest also, to complete his title. Without registration I apprehend that the vendee would not be entitled to the whole benefits of ownership. I doubt if he could transfer."* In the same decision Dr. Lushington also held that (same page) *"I apprehend that, apart from registration, the execution of a bill of sale entirely divests the title of the vendor."*

In the decision in 'BOYSON v. GIBSON', (see fn. 66) Maule J. came to the conclusion that under the Act then in force (3&4 Will. 4 c.55), a bill of sale, with regard to any effect it might have, becomes operative from the moment of registration, which is a unilateral Act.

In 'STAPLETON v. HAYMEN'⁷⁴ the Court held that the ownership passed to the unregistered purchaser by the bill of sale. There are two points in that decision that can be commented on. Firstly, that the owner was registered at the time of the trial, and secondly that the Judge held that the seller (who remained registered after the sale) could give a good title to another person. If one applies on that comment the principle that the Court cannot take away the title from a purchaser for valuable consideration and without notice of fraud,⁷⁵ it seems that the unregistered buyer acquires less than a full title, or, at least, that he cannot protect the right that he acquired. As far as the seller is concerned and given that nobody can transfer more rights than he has, it seems that he remains owner after the execution of the Bill of Sale.

However, the decision was given after the 25&26 Vict. c.63, s. 3 of which recognised equitable interests in respect of ships. According to Abbott⁷⁶ and to the 'BATTHYANY v. BOUCH'⁷⁷ this Act was passed after the decision in 'THE LIVERPOOL BOROUGH BANK v. TURNER'⁷⁸ in order to mitigate the inequitable effects that that decision could have. It can be argued, that an equitable interest is valid and enforceable only between the parties that took part in the transaction and has no effect on third parties.

3. Jurisdiction to restore possession of the certificate.

Section XVIII of 34 Geo. 3 c.68 gave jurisdiction to any Justice of the Peace or to any member of the Supreme Court to restore the possession of the certificate of registry in case a master detains it wilfully. This jurisdiction was retained by the later Acts. Section XXV

⁷⁴ 'STAPLETON v. HAYMEN' Law Journal 1864 vol.33 p.170

⁷⁵ see fn. 70

⁷⁶ see ABBOTT 13th ed. p.76

⁷⁷ 'BATTHYANY v. BOUCH' Aspinall's Maritime Law Cases vol.4 (1878-1882) p.380 per GROVE J. at p.382.

⁷⁸ 'LIVERPOOL BOROUGH BANK v. TURNER' Law Journal 1860 vol.29 p.827 Courts of Chancery.

of 4 Geo. 4. c.41, s. XXVII of 6 Geo. 4. c.110, s. XXVII of 3&4 Will. 4. c.55 and s. XXX of 8&9 Vict. c.89 were similarly worded. These Acts gave jurisdiction to any Justice of the Peace or to any member of the Supreme Court to restore the certificate of registry to the person entitled to the custody of it.

In the decision in 'THE FRANCES', Lord Stowell held that the Court of Admiralty had jurisdiction to restore possession of the certificate and that this jurisdiction was not affected by the statute.⁷⁹

The jurisdiction of other Courts was parallel and the decision was dependent on the course that the party decided to pursue.⁸⁰

In the case of 'GIBSON v. INGO',⁸¹ decided in the Court of Chancery, counsel argued that the Court has no jurisdiction to order the delivery of the certificate, and the Judge held that: "*I can see no reason why the certificate of registry of a ship should be excepted out of the general jurisdiction of the Court to order documents to be delivered up.*"

⁷⁹ 'THE FRANCES', ENGLISH REPORTS vol. 165, p. 1533, 2 Dods. 420 Court of Admiralty. April 1, 1820. Some of the conclusions of the Court are cited.

Sir W. Scott (as Lord Justice Stowell then was) held that the Admiralty Court has jurisdiction to order a certificate of registry to be restored to the owner of a ship. The Acts giving jurisdiction to the Justices of Peace do not interfere with the jurisdiction of the Admiralty Court. (E.R. p.1533 - Dods 421)

The policy of the statutes is to bring out to view and examination the real ownership, in order that due inquiry might be made, where requisite, into their claims of national character to which the privileges of British navigation were to be confined. The principal of the registered agent cannot be considered as owner. (E.R. p.1534 - Dods 423)

If the register is invalid, the Court will not interfere. (E.R. p.1534 - Dods 424)

Certain decisions of Courts have mollified the rigour of some constructions of this class of statutes adopted in earlier cases, particularly in the leading case of 'MOSS v. CHARNOCK'. (E.R. p.1536 - Dods 431)

⁸⁰ 'BOWEN v. FOX' ENGLISH REPORTS vol.109 p.366 - 10 B & C p.41, Court of King's Bench. November 13th, 1829

Lord Tenderden at 367 - 43: *'in common law, a party can have a lien upon the certificate of registry and so is not obliged to deliver it unless the owner of the certificate pays all that is due upon the account for which it was pledged. If a plaintiff wants to avail himself of the right given by the statute (4 Geo.4 c.41) he has to pursue the course pointed out by the statute'*.

⁸¹ 'GIBSON v. INGO' English Reports vol.67 p.1103 - 6 HARE 112 High Court of Chancery, January 1847(at 1105 - 115) (at 1106 - 119)

The provision for the jurisdiction of Courts in case a master detains wilfully the certificate of registry of a ship was extended by MSA 1854 and embraced "any person whatever, whether interested or not in the ship". Jurisdiction in that case was given to any Justice or to any Court capable of taking cognizance of such matter.^{82, 83} (s. 50)

4. Certificate of registry as evidence.

The register was admitted in the admiralty court as evidence of the ownership in a vessel. Today it is clear that it is only *prima facie* evidence of title,⁸⁴ but then the matter was not as clear. The early Acts made the registration essential for the transfer of ownership and consequently the certificate of registry conclusive evidence⁸⁵ of ownership or at least absolute evidence of want of title in case one's name did not appear on the certificate.⁸⁶ When the 1854 MSA came into force, a provision for the admissibility and the conclusiveness of the certificate of registry as evidence of title became essential. Section 107⁸⁷ provided that the register shall be admissible as evidence and it shall be *prima facie* proof of ownership. At any rate, the Admiralty Court had jurisdiction to deal with the certificate.

⁸² 'THE St. OLAF' Aspinall's Maritime Law Cases, vol.3 p.268 Court of Admiralty May 12, 1876

Sir R. Phillimore held that the Court of Admiralty has jurisdiction to restore the certificate of registry to the owner. (at p.269)

'THE CELTIC KING', 1894 Probate Division p.175 (Court of Admiralty) Although post-1890 decision, it refers to the MSA 1854. The Court held that it has jurisdiction to restore the possession of the certificate.

⁸³ see 'JOHN MANNERS ARKLE v. THOMAS SMITH HENZELL' 1858 LAW JOURNAL vol.27 p.110 January 20, 1858, and 'ROBERT WILEY v. THOMAS CRAWFORD AND JOHN WILLIAM FENWICK' English Reports vol.121 p.713 - 1 B&S 265 May 10th, 1861

⁸⁴ See 'THE BINETTA', 1966 LI. L. Rep. vol. 2 p.419

⁸⁵ See ABBOTT 13th ed. p.78.

⁸⁶ See 'THE FRANCES', English Reports vol. 165, p. 1533, 2 Dods. 420 Court of Admiralty. April 1, 1820

The register and certificate are conclusive evidence of want of title against those not named therein. In the absence of contrary information, a relaxation of the policy of the statutes cannot be presumed. (E.R. p.1537 - Dods 431)

⁸⁷ Section 107 of 1854 MSA is cited in the Appendix. See also ABBOTT 13th ed. p.82

In the case of 'HIBBS v. ROSS', the defendant was the registered owner of a vessel and the court held that this was proof of ownership and even proof that he was liable to a person that sustained injuries while walking on the vessel.⁸⁸

In the 'BAUMWOLL MANUFACTUR VON CARL SCHEIBLER v. FURNESS',⁸⁹ the court held that the register is only prima facie proof of ownership, but the subject of that case was the liability of the owner and not the ownership.

In many cases where the courts have dealt with the evidentiary value of the register, the point in question was the national character of the vessel and not the ownership.⁹⁰ The courts have held that the prima facie evidence of nationality will be rebutted, if there is proof that the owner of the vessel is a foreign subject.

Section 695⁹¹ of the 1894 MSA is differently worded and implies that the register shall be conclusive evidence as to the ownership. However, it is not clear if the law was so.⁹² It is submitted that the 1894 MSA was more or less a consolidating Act and resembled the pre-1894 law.

5. Conclusion.

It appears from the above that the registration and its consequences were within the jurisdiction of the Court of Admiralty, although in some cases without an express statutory provision.⁹³

⁸⁸ 'HIBBS v. ROSS' 1866 QB (1) p.534

⁸⁹ 'BAUMWOLL MANUFACTUR VON CARL SCHEIBLER v. FURNESS', 1893 A.C. p.8 H.L. (at p.20)

⁹⁰ see 'THE QUEEN. v. BJORNSEN' Revised Reports. vol.146 p.828, Law Journal vol.34 p.180 (cases connected with the duties of magistrates), 'THE SCEPTRE', Law Times vol. XXXV p.429 and 'THE ANNANDALE', Law Times vol. XXXVII p.364.

⁹¹ see the Appendix.

⁹² In 'THE BOARD OF TRADE v. SAILING SHIP GLENPARK', 1904 KBD vol.1 p.682, which dealt with another provision of 1894 MSA, worded similarly to s. 695. the Court of Appeal did not express an opinion as to whether 'sufficient evidence' can be read as 'conclusive evidence'.

⁹³ see also fn. 172

Therefore, according to s. 6 of the AJRA one has to apply English law on matters concerning registries.

The section provides that the English law to be applied is the law that the English Court of Admiralty would have applied at 1st November 1983,⁹⁴ as far as applicable.⁹⁵

The South African MSA has regulated registration extensively, and so there is not much space for the application of English law. However, given that MSA is taken not to have amended the common law unless it expressly did so, the provisions of MSA have to be interpreted under the light of the principles of English law.

⁹⁴ see the 'BRADY HAMILTON STEVEDORE Co and OTHERS v. M/V KALANTIAO', 1987(4) SA 250 at 253 B-D.

⁹⁵ It is interesting to notice that this restriction refers only to English law. If R-D law is applicable there is no such restriction although R-D law can be more obsolete than English law. The argument that every law applies as far as it is applicable applies equally to both cases.

VI. REGISTRATION AND OWNERSHIP⁹⁶

1. Protection of ownership

A connection of ownership and registration is the protection that the registration can afford to ownership.

The private international law theories suggest that the applicable law in case of movables is the law of the jurisdiction where the movable is situated. However, several writers accept that the non-recognition of rights acquired in a different jurisdiction would certainly lead to a chaos which would be unjust particularly for persons that have regulated their long term affairs according to the foreign system.⁹⁷ The need for foreign acquired rights to be recognised and protected was first realised by Huber who, in his work on the conflict of laws, set out, among others, the principle that *"by reason of comity, every sovereign admits that a law which has already operated in the country of its origin shall retain its force everywhere, provided that this will not prejudice the subjects of the sovereign by whom the recognition is sought"*.⁹⁸

This principle formed the basis of the vested or acquired rights theory which was developed in the Anglo-Saxon theory and was followed by Dicey and Beale. The followers of this theory maintained that a judge does not apply foreign law but simply recognises and enforces a right that has been acquired under foreign law.⁹⁹ This theory prevailed for many years until it was successfully opposed by Savigny, who maintained that one cannot ascertain what rights are acquired (if any), unless he knows beforehand which law to apply in order to decide whether the rights in question were in fact acquired or

⁹⁶ see infra Ch.4 "DEFINITION OF SHIP"

⁹⁷ see FORSYTH p.44, ANTON p.28

⁹⁸ see CHESIRE p.22, FORSYTH p.31

⁹⁹ see FORSYTH p.43ff, CHESIRE p.25ff

not, and so the vested rights theory presupposes the answer to the question.¹⁰⁰

However, the problem here is different. The question is not to determine the existence of contractual or delictual rights or liabilities, but to respect a right that was acquired in another jurisdiction and not to consider the thing as a *res nullius*. The non-recognition of these rights could present a problem in jurisdictions where a similar or equivalent right is not recognised.¹⁰¹

In such a case, the flag at the stern of the vessel serves as a manifestation of the legal system according to which the ownership has been acquired and the respect to which ordains its recognition. This is in effect the rule set out in the "*Asya*" case¹⁰² where the Court, although it named the appellant owner of the vessel and referred to him as such, held that no protection can be afforded to him because his vessel was flying two flags and so it was assimilated to a vessel flying no flag.

It is true that the value of the flag as connecting factor in the field of private international law has been criticised by many writers and often sharply. Tetley, in an article canvassing the value given to the flag as connecting factor in different jurisdictions and by different enactments, suggests that, given the existence of flags of convenience and double registries, the flag should be only one indicator among many.¹⁰³

However, the views of Tetley and the other writers he refers to, deal with contractual or delictual liabilities and with jurisdiction on board vessels, and not with the protection of the owner's right.

¹⁰⁰ see FORSYTH p.44

¹⁰¹ This could be the case with a vessel arriving at a port of the former Soviet Union where private ownership in vessels was not recognised.

¹⁰² '*NAIM MOLVAN, OWNER OF THE MOTOR VESSEL ASYA v. ATTORNEY GENERAL FOR PALESTINE*' (1948 A.C. 351)

¹⁰³ see TETLEY, p.183-184

Wengler writes that, according to public international law, a State is under an obligation to recognise private law continuing relations (privatrechtliche Dauerverhältnisse). The State in the territory of which a movable is transported cannot maintain that the thing is *res nullius* because it was not acquired according to its own law and so allow the creation of new rights by occupation.¹⁰⁴ Another German writer, Kegel, refers to the theory of Pillet for the protection of rights acquired in foreign jurisdictions and maintains that it is superfluous because it is contained in the concept of private international law.¹⁰⁵

The position in the Greek law theory is similar to the German and in effect the same as the Anglo-Saxon theory. It is accepted, that when a movable is transferred to another State its position is regulated by the new *lex rei sitae*. Vrellis writes¹⁰⁶ that if, while the movable was in the first State, a person had acquired real rights, then these rights are recognised and respected in the new State, provided that the law of the new State recognises the same or a similar right.¹⁰⁷ In case it does not, the right is annulled.

There are two observations that can be made on that point. On the one hand, a person is under no obligation to risk his rights in movables by transferring them to a different jurisdiction. On the other hand, the application of a supranational principle which does not leave the existence or validity of real rights to the new State's discretion seems appropriate.

¹⁰⁴ see WENGLER p.23

¹⁰⁵ The example given by Pillet is that a person travels from France to Switzerland, having with him his suitcase. When he arrives in Switzerland, somebody takes away the suitcase and says that the French law, according to which the suitcase was bought, does not have extraterritorial effect and consequently the suitcase is a *res nullius* in Switzerland. Therefore, he does not commit theft and he can walk away with the suitcase. Pillet maintains that if the principle for the recognition of foreign acquired rights did not exist, the Courts would have to give right to the thief. see KEGEL p.18

¹⁰⁶ see VRELLIS, p.153-154.

¹⁰⁷ It seems to be practically difficult to establish the identity or similarity of rights in different jurisdictions. Apart from that, in certain cases, as in the example given in fn. 101 the lack of similarity or identity is given, but the rights in the vessel still have to be protected.

Another writer,¹⁰⁸ discussing the applicable law on *res in transitu*, makes a distinction between the vehicle (car, vessel, train etc.) that is actually carrying the movables into another jurisdiction and the movables that are carried, and submits that in the case of the vehicle it is more appropriate to apply the law of the State of registry.

2. Transfer of ownership

A. South African Law

MSA provides that a prerequisite for the registration is that the ship belongs to a person or a company qualified to own a South African ship (s. 13(1) MSA), and so it is clear that for registration purposes ownership is deemed to have been transferred by the deed of sale.

However, there are some arguments to support the view that ownership is transferred with the deed of sale only for registration purposes (i.e. that in effect the deed of sale is merely the instrument giving to a person the right to apply for registration¹⁰⁹) and that for other purposes the registration is essential. A general argument is that there seems to be no reason why a purchaser should register a ship, or why the law requests him to do so, if he has complete ownership for all purposes.

Ownership can be looked at from many different perspectives and consequently the definitions given by writers differ from each other.¹¹⁰ Wille defines ownership as the right which a person has in a thing to possess it, to use it and take its fruits, to destroy it and to alienate it.¹¹¹ However, one aspect described by all writers is that ownership is an absolute right,¹¹² and so must be respected by everybody and can be

¹⁰⁸ see SPIROPOULOS, p.314

¹⁰⁹ This principle was set out in English law in 'THE SPIRIT OF THE OCEAN' and in the 'BOYSON v. GIBSON' cases (see fn. 73). It must be taken to be valid in S.A. law (see p.37)

¹¹⁰ see LAW OF PROPERTY, p.37. For the Greek theory see generally GEORGIADES, vol. C §33. For the German theory, MÜNCHENER KOMMENTAR, §903 No.3

¹¹¹ See WILLE p.201

¹¹² LAND OWNERSHIP, p.46f

invoked against everybody. This characteristic of ownership and accordingly the protection afforded to it by the relevant municipal law system would be futile if it was not recognised out of the jurisdiction in which it was acquired.

Section 61 MSA provides that the registered owner has the right absolutely to dispose of the ship or share subject only to rights of third persons recorded in the register and provided that all mortgagees have given their consent. The Act does not contain any provision for the right of an unregistered owner to dispose of a ship and so gives rise to the argument that an unregistered owner does not have such rights. This restriction is incompatible with full ownership and thus could not be imposed if the unregistered owner had full ownership.

According to s. 29 MSA, the registered owner of a South African ship has to notify the registrar in case his ship ceases to be a South African ship by reason of transfer to an unqualified person and the registrar shall close the registry subject to the provisions of para (c). The register cannot be closed without the consent of the mortgagees. In case the ship is sold without the consent of the mortgagees the register remains open (with the consequence that other States will presumably deny to register that vessel in their registry) and in effect the sale is not recognised and the ship is deemed to remain in the ownership of the former owner. This construction also suggests that the registration and the deletion are essential for the transfer of ownership.

The registered owner is the only person that can apply for a certificate of sale [s. 54 MSA]. Subsection (3) of the same section provides that *"a certificate of sale or mortgage shall not authorise any sale or mortgage to be made in the Republic or by any person not named in the certificate."* The registered owner is given by s. 58 the power to revoke the certificate of sale. If the registration is held not to have an effect on ownership there is no satisfactory explanation why an unregistered owner cannot sell his vessel.

B. Greek Law

In Greek law the position is more straightforward. Section 6 of the CPrML requires for the transfer of ownership in a vessel a written agreement between the parties to the effect that the ownership is transferred for a legal cause.¹¹³ The agreement has to be registered and the transfer does not take place until the registration.

C. German Law

Until the 31-12-1940, ships were regarded to be movables and were treated accordingly. The ownership would be transferred according to §§929ff BGB and no particulars were entered in the register.¹¹⁴ The German Civil Code regulates specifically (§929a) the transfer of an unregistered ship and provides that the delivery is not a prerequisite for the passing of ownership.

After the 1-1-1941, when the Act for the rights in registered ships and ships under construction came into force,¹¹⁵ unregistered ships are transferred in the same way as before. Registered ships are deemed to be immovables and so for their transfer one would have to apply the general principles for the transfer of immovables, i.e. agreement between seller and buyer and registration of the transaction. However, s. 2 of the SchiffsG introduces an important exception and makes the agreement the only requisite for the transfer of a registered sea-going¹¹⁶ ship.

¹¹³ In Greek law there is a distinction between causal and non-causal legal transactions. By that is meant, that the validity of the performance of a transaction hinges on the validity of its reason, i.e. of the agreement of the parties to perform the transaction.

The result is that a causal transfer of a purchased thing would be void if the agreement of the parties was void and thus the seller would be entitled to an action for recovery of the thing, whereas a non-causal transfer would be valid (in absence of any other ground for nullity) and thus the seller would be entitled only to an action for unjust enrichment.

¹¹⁴ See ERMAN, Schiffsgesetz vor §1 No. 5

¹¹⁵ Gesetz über Rechte an eingetragene Schiffe und Schiffsbauwerken, of 15-11-1940 RGBI. (the then Government Gazette) vol. I p.1499, BGBI. (the new Government Gazette) vol. III p. 403-404, hereinafter abbreviated SchiffsG.

¹¹⁶ The transfer of inland water ships (Binnenschiffe) is regulated differently. Given that no such category of ships exists in South African or Greek law, this special category will not be examined in this paper.

The registration is rebuttable evidence that the person whose name appears on the register is the owner of the ship (§15 SchiffsG). However, for the person that acquires a right in a ship (ownership, mortgage or usufruct) the contents of the register are decisive, unless an objection to the correctness of the register has been entered in the register or the buyer knows that the contents of the register are false (§16 SchiffsG) with the result that if an owner sells his vessel and later, while his name still appears on the register, sells the ship again to a third person, the third person acquires ownership and the right of the first buyer becomes extinct.¹¹⁷

¹¹⁷ See ERMAN vor §§15-17 No.2

VII. AUTHORITIES THAT KEEP REGISTRIES

A. South African Law

At the time when South Africa was a British Colony, the various British Statutes initially gave the power to register ships at the Cape of Good Hope to the governor, lieutenant governor or commander in chief,¹¹⁸ and later to the collector of Duties.¹¹⁹

The South African MSA follows the same principle of publicity and establishes a register of South African ships. It provides for the appointment of a proper officer by the Director General (s. 2(1)), who shall, according to s. 15, enter all ships registered by him in a book called the register.

Port of registry is defined by law as the port in which a vessel is registered. According to s. 4(c) MSA the Minister can, by notice in the Gazette, declare a port in the Republic as port of registry. The Minister in the exercise of this power has declared Cape Town, Durban, Port Elizabeth and East London as ports of registry.¹²⁰

The Act provides only for the keeping of a register book. Although it directs the registrar to register mortgages,¹²¹ there is no provision either in MSA or in the Regulations for the keeping of a register of mortgages and so the mortgages are registered¹²² in the same book as the ownership. The Regulations simply provide that the Deed of mortgage shall be tendered or transmitted to the registrar but do not order the registrar to register it.¹²³

¹¹⁸ 4 Geo. 4 c.41 s. III, 6 Geo. 4 c.110 s. III, 3&4 Will. 4 c.55 s. III, 8&9 Vict. c.89 s. III

¹¹⁹ 17&18 Vict. c.104 (MSA 1854) s. 30 see also HALSBURY vol.43, §149

¹²⁰ see GN 2100 GG 6337 of 24-12-1959, also VAN NIEKERK p.74 fn6

¹²¹ s. 47 (1) MSA "... On the production of such instrument the proper officer at the ship's port of registry shall record the mortgage in the register."

¹²² For the effect of registration on mortgages see infra p.73

¹²³ s. 23(2) of the 1988 Registration of Ships Regulations.

B. Greek Law

The law concerning registries in Greece can be found basically in the Royal Decree¹²⁴ (henceforth referred to as R.D.) of the 10/17 July 1910. Relevant provisions can also be found, among other enactments, in the CPrML, the CPuML and the R. D. of the 25/30 October 1919.

Section 1 of the R.D. of the 25/30 October 1919 provides that all central port offices and some of the secondary port offices are competent to recognise the Greek character of vessels and register them.

Apart from the register books, the port authorities keep a register of mortgages, a register of arrests (s. 1 of the R.D. 10/17 July 1910), a register of all applications for any registration (s. 7a) and a special book where the registrar notes his denial to proceed with an application for registration and the reasons for such denial (s. 19). All these books are kept in the central port offices by an officer who has a law degree,¹²⁵ and in all other port offices by the chief officer (s. 4 of the R.D. 25/30 October 1919).

¹²⁴ s. 43 of the Greek constitution gives the State President the power to issue the Decrees required for the execution of Statutes. Formerly (when Greece was a Kingdom) similar powers were given to the King (hence Royal Decrees).

¹²⁵ see LYKOS, §2 p.14

VIII. REGISTRATION OF TRANSFERS

1. General

A. South African Law

Section 11 MSA provides that only ships wholly owned by the Government, or South African citizens, or citizens of a treaty country, or bodies corporate of a treaty country can be registered in the Republic. Section 13(1) obliges the qualified owner of a vessel of twenty-five or more gross tons to register in the Republic if the majority of the owners are resident in the Republic or the vessel is principally controlled in S.A., unless she is already registered in the Republic or elsewhere.

The reference of the Act to a ship, indicates that a ship under construction (which does not fall under the definition of s. 2(1)MSA) cannot be registered. However, s. 10 MSA obliges every person that intends to built a vessel which, when completed, will be required to be registered according to MSA, to furnish to the proper officer at the port where she will be registered such written particulars as have been prescribed by s. 3 of the 1988 Regulations.

Although it seems strict, the section introduces an important exception by allowing the qualified owner not to register his vessel if it is already registered elsewhere. A second hand ship will invariably be registered somewhere. Even in the case of new-builds, there are many jurisdictions which allow the registration of ships under construction.¹²⁶

¹²⁶ At least the Greek law. (see *infra* p.53) The German law also allows the registration under special circumstances (see p.57)

The applicant must submit:

a) a declaration of ownership which must be in the form set out in the 1988 Registration of Ships Regulations¹²⁷ (henceforth referred to as 1988 Regulations).

b) a builders certificate containing a true account of certain particulars of the ship, or, if the time and place of building is unknown or the certificate cannot be obtained, the deed of sale under which the ship became vested to the applicant for registry, in which case the applicant must furnish to the registrar the following particulars:

i) the number, date and port of the previous registry (if any);

ii) type, material of hull and means of propulsion;

iii) the length, breadth and depth;

iv) the number of decks; and

v) the gross and net tonnage.

c) if there has been a change of ownership, the deed of sale; and

d) if the ship has been forfeited, an official copy of the notice of forfeiture

Regulation 9 adds to the aforementioned the following documents:

a) a tonnage certificate; and

b) a carving and marking note, as set out in the Appendix to the 1988 Regulations.

It is interesting to notice that the Act or the Regulations nowhere require a certificate of deletion. The only relevant provision is s. 35(2) MSA, but it embraces only transfer of the registry of a South African

¹²⁷ see the Appendix.

ship and not registration of a ship that was formerly flying a foreign flag.

Another point provided for by s. 5 of the 1988 Regulations is the name of the vessel. The person that wants to apply for the registration of a vessel has to notify in writing the proper officer of the proposed name of the ship. If that name is not already used by another South African ship or it is not a homophone of such a name the Director General may authorise the registration under that name.

B. Greek Law

Section 2 of the CPML provides that Greek ships are registered in the Greek registry. The section is so worded that it does not impose an obligation to register. It only imposes restrictions as to who can register. Given that coastal traffic and also towage and professional salvage are reserved for ships flying the Greek flag, registration is important for passenger vessels and tugs. Otherwise many owners register their vessels in third States and fly flags of convenience.

A vessel is recognised as Greek only if more than the half of the shares in it are owned by Greeks, or, in case of a company-owned vessel, more than the half of the shares in the company are owned by Greeks (s. 5 of the CPuML).

Section 6 of the CPuML provides that the recognition of a vessel as Greek is effected by the registration in the Greek register and s. 9¹²⁸ that the real rights in a vessel are regulated by the law of the flag.

A problem that arises with the above mentioned provisions is that when a Greek buys a vessel, he cannot register it because although it can be recognised as Greek, the recognition has not yet been effected. A similar problem arises with the deletion of vessels from the Greek registry. A vessel is Greek until it is deleted, but as long as she is not deleted, she still belongs to the qualified owner and so there is no

¹²⁸ cited in the Appendix

reason to delete her from the register. The problem is solved by holding that for registration purposes one must determine the ownership not according to s. 6 of the CPrML, but according to the general civil law.¹²⁹

Ownership in a vessel can be acquired in the following ways:

a) private sale; according to s. 6 of the CPrML, a vessel can be sold in Greece with a written agreement between the owner and the purchaser that the ownership in the vessel is transferred for a legal cause.¹³⁰ If the contract is concluded in another country, the formalities of that country must be complied with,¹³¹ otherwise the contract will be void in Greece. There are some restrictions for the sale of a vessel to foreigners.¹³² Section 16 (2) of the CPuML provides that if shares in a vessel are sold to a foreigner, with the result that he owns exactly half of the shares in the vessel, the transfer of ownership is null and void by one percent, if the shares transferred represent more than one percent and by the transferred percentage, if it is less than one percent. The same restrictions apply to non contractual transfer.¹³³ For the sale of passenger ships, car ferries and tugs, the seller has to obtain the Minister's consent.¹³⁴

b) sale by public auction; Usually, such sale will take place in order to satisfy the creditors of a ship owner. It is also possible, that a ship belonging to more than one person (natural or juristic) is auctioned so that the owners can liquidate their share. The importance of a sale by

¹²⁹ Advisory opinion of the legal department of the Ministry of Merchant Marine No 865/1988.

In this case one must look only at the agreement of the parties to transfer the vessel and not at any formalities such as registration. For this purpose the vessel is deemed to be transferred as any other movable.

¹³⁰ see *infra*, fn 113

¹³¹ see s. 11 of the Civil Code, cited in the Appendix.

¹³² During the second world war, the sale of Greek vessels to foreigners was prohibited. The prohibitions have been gradually abolished. see LYKOS, p.63ff

¹³³ see DELOUKAS, p.85f, KIANTOU - PABOUKIS, p.34

¹³⁴ see s. 15 of the CPuML, LYKOS, p.65.

auction is that the buyer takes the vessel without liens or encumbrances.¹³⁵

c) abandonment to the underwriters; the ship owner has the right to abandon his vessel to the underwriters (s. 280, 281 CPrML). If the underwriter does not reject the abandonment within thirty days or if a decision of a competent court recognises the right of abandonment, the underwriter becomes owner (s. 285 CPrML). This provision is *lex specialis* and therefore the registration of the abandonment does not transfer the ownership, but serves merely to notify the public.¹³⁶

d) prescription; a person possessing a vessel bona fide for three years and having a registered title becomes owner (s. 292 (1) CPrML). Subs. (2) provides that a mala fide possessor becomes owner after ten years.

e) ownership can also be transferred by donation or inheritance.

There are three books in which vessels are registered according to their type and tonnage. Sailing ships and steamships with net tonnage of more than ten but less than sixty tons are registered in class A register. Ships with higher tonnage are registered in different books depending on whether they are sailing ships or engine-powered.

The existence of many small vessels, which are used around the Greek coasts for fishing made the introduction of a register for vessels with net tonnage of less than ten tons necessary. The provisions regulating registries apply by analogy. Boats are registered in a special book for statistical and controlling purposes only, and the registration provisions do not apply. The criterion used for the distinction between small vessels and boats is the existence of a deck which covers at least the half of the overall length of the vessel.¹³⁷

¹³⁵ see DELOUKAS, §65, p.120 (for the liability for taxes and social security payments see *infra* p.68)

¹³⁶ see DELOUKAS, §66, p.120ff

¹³⁷ see HAMILAKIS, p.30

Another criterion used for the definition of a ship in Greek law is that it must be able to move by its own means of propulsion. Consequently, any floating constructions, barges, floating oil rigs, refineries, oil storage tanks etc. are not ships and cannot be registered as such according to the CPrML. After the discovery of oil fields in the Aegean sea, special provisions were enacted to enable the registration of these constructions and the application on them of some of the provisions of the CPrML.

The registration refers to existing ships but there is a special provision for the registration of ships under construction (s. 4 of the CPrML). According to it the applicant must submit the final ship-building contract, or, in case of a ship-building company, a declaration that the company decided to built a vessel for its own account. The declaration must contain all the particulars of the vessel.¹³⁸

¹³⁸ The Act provides generally for the documents to be submitted. The details are regulated by orders of the Ministry of Merchant Marine. HAMILAKIS (pp. 22-25) gives a detailed list of all the documents that the register office demands:

- 1) ship-building contract;
- 2) declaration of the ship-builder containing all the particulars of the vessel to be built;
- 3) if the owner is a person, a declaration stating:
 - a) that he is the owner,
 - b) that the vessel is not registered in any other port in Greece,
 - c) the type and power of the engine
- 4) if the owner is a company:
 - a) a certificate, issued by the Union of Greek ship owners, that the company is Greek,
 - b) the articles of incorporation,
 - c) appointment of an attorney and acceptance of the appointment (this is the translation of the Greek word *antiklitos*. Hagberg uses the term process agent. Antiklitos is the person, not necessarily a lawyer, who is appointed to receive any document served to the company.).
- 5) application for registration;
- 6) in case the vessel is a passenger ship, approval of her name by the Minister of Merchant Marine (in all other cases the name is chosen freely by the ship owner - s. 6(3) of the CPuML);
- 7) a receipt for fees paid to the Greek Chamber of Shipping;
- 8) plans of the vessel;
- 9) if the vessel is a passenger ship and the ship owner is a company, a certificate from the Ministry of Merchant Marine that the company is Greek;
- 10) a certificate from the taxing authorities that the owner has no debts.

For the registration of an existing vessel, the applicant has to submit:

a) evidence of ownership. In case the vessel is purchased outside Greece, this will usually be a BoS. In order to be valid in Greece, the contract must be concluded according to the formalities of the place where it was signed,¹³⁹ and also stamped and signed by the Greek consular authorities;

b) passport or ID book of the applicant, as proof of Greek nationality;

c) a declaration stating who is the owner(s), that the vessel is not registered in any other Greek port, that no provisional certificates have been issued for her, and whether a VHF is installed or not. The declaration must also contain appointment of a process agent and the acceptance of that appointment;

d) tonnage certificate;

e) for vessels formerly flying a foreign (not Greek) flag, customs clearance;

f) if the owner is a company, a certificate that the company and the interests in it are Greek and a copy of the articles of incorporation;

g) a receipt for the payment of fees to the Greek Chamber of Shipping;

h) a certificate from the taxing authorities that the owner has no debts;

i) in case the vessel is a passenger ship, approval of her name by the Ministry of Merchant Marine; and

j) an application for registration.

The Greek legislation does not require a certificate of deletion. However, the register office will invariably require such a certificate,

¹³⁹ see s. 11 of the Civil Code

although it cannot abstain from registering in case it is not submitted.¹⁴⁰ Bilateral agreements, which make the certificate a prerequisite for the registration, have been signed with Germany, Italy, Bulgaria and Cyprus.¹⁴¹

The legislative decree 2687/1953 'for the investment and protection of foreign capital', provides in s. 13 that vessels of more than 1500 tons which are registered after the legislative decree comes into force, are deemed to be foreign capital. In order to register a vessel under the provisions of that L.D., the applicant must submit a joint decision of the Ministers of Finance and Merchant Marine approving the registration of the vessel concerned under the provisions of it. Apart from that decision, the applicant has to submit the documents required for registration under the general provisions.

The significance of the registration under the L.D. 2687/53 is that the administration can include in the Ministerial decision approving the registration any term deviating from the provisions of civil, mercantile and procedural law, even from those of public order.¹⁴²

C. British Law

One of the changes introduced by the new Act (1993 MSA) is that all the existing ports of registry are closed and one central computerised port of registry in Cardiff is established in order to simplify its administration and the process of checking vessel's details and charges registered against them. Ship owners are allowed to choose one of 114 named ports as port of choice and keep on the stern of their vessels the name of it, but this "registration" seems to be insignificant from a legal point of view.

¹⁴⁰ see supra, p.18

¹⁴¹ see LYKOS, p.25, HAMILAKIS pp.23, 26

¹⁴² see HAGBERG, p.211-3 For special regulations regarding change of flag and deregistration of these vessels, see infra p.70

The Act also makes a criminal offence [s. 2(7)] the failure to deregister a vessel from its previous register (if any) when it is registered in UK.

Another innovation is the registration of bareboat charters.

If a vessel registered in a country other than the UK is bareboat chartered to a person which is qualified to own British ships and provided that all the other conditions prescribed by the Act for the registration are met, the ship may be given the right to fly the British flag for the duration of the charter without being deleted from the original register.¹⁴³ The right can be given for the charter period or for five years, whichever is the lesser.¹⁴⁴ For the determination of any legal problems that might arise with regard to a vessel so registered, the Act makes in s. 7(7) a distinction between public and private law provisions. Questions as to ownership and mortgages will be determined according to the law of the original registration State and the other private law matters will be determined according to the ordinary conflict of laws principles.¹⁴⁵

The registrar has, with regard to charter registration, the discretion and powers referred to below with regard to normal registration (see p. 61).

The original Bill before parliament contained a provision regulating the opposite case, namely the registration under a foreign flag of a vessel originally flying the British flag. Such dual registration would have lowered the operating costs of the vessel because the British merchant shipping laws would not have applied. However, these provisions were removed from the Act.¹⁴⁶

¹⁴³ An international register was introduced in Germany in 1989. see below, p.58

¹⁴⁴ see LMCQ 1994, p.152

¹⁴⁵ see LMCQ 1994, p.147, 152

¹⁴⁶ see LMCQ 1994, p.151. For a similar regulation of German law and its conformity with European Union law see *infra*, p.58

D. German Law

According to §1 of the FlaggenRG¹⁴⁷, ships belonging to German nationals who are resident in Germany or to German companies which have their seat in Germany are obliged to fly the German flag. Section 2 of the same Act provides that ships belonging to German nationals resident abroad are entitled to fly the German flag.

An obligation to register exists only for ships of the first category (§ 10 subpara.(1) of the SchiffsRO¹⁴⁸). Ships of the second category can fly the German flag without being registered.

According to the definition of ships in Germany,¹⁴⁹ a ship under construction is not a ship. However, § 66 of the SchiffsRO allows ships under construction to be registered provided that a mortgage is also registered at the same time or someone has applied for the sale of the ship by public auction.

The registration does not have the importance that it has in South African and Greek law. It seems that it basically serves international law purposes¹⁵⁰.

The German law clearly recognises unregistered ships and there is no provision similar to that of s. 27 MSA. As far as the obligation to fly the German flag and its misuse is concerned, the law adopts a more relaxed view than the South African and the Greek. Firstly, the provisions regulating the concealment of the German national character of a vessel refer only to ships that are obliged to fly the German flag (§§ 15, 6(1), 1 FlaggenRG). Secondly, the law provides

¹⁴⁷ Act for the law of the flag of sea-going ships and for the flying of flag of the inland waters going ships BGBl 1951, vol. I p.79. (in German Gesetz über das Flaggenrecht der Seeschiffe und die Flaggenführung der Binnenschiffe - Flaggenrechtsgesetz, hereinafter abbreviated FlaggenRG).

¹⁴⁸ Registration of ships regulations of 26 May 1951 BGBl vol. I p. 359 (in German Schiffsregisterordnung, hereinafter abbreviated SchiffsRO).

¹⁴⁹ see supra, p.24

¹⁵⁰ The certificate of nationality creates and proves the right to fly the German flag. see PALANDT vor §929a No 3

for some options that are totally unknown to South African and Greek law.

The 1989 ISR¹⁵¹ statute introduced an international register in Germany. According to its provisions, ships can be registered in it if they take part in the international trade (as it is defined by the income tax statute). The registration in this registry does not affect the normal registry at all. The only difference is that the German labour law and collective labour agreements do not apply with regard to seamen serving on these ships and which are not German or do not have the nationality of any other State of the European Union (s. 21(4) FlaggenRG)¹⁵².

It was submitted, that the non-application of these provisions and the consequent lowering of the running costs of vessels registered in the German international register constituted a governmental subsidy which is prohibited by art. 92 (I) of the EEC treaty, and that the lower living and working standards of the non-EEC (now EU) seamen on these vessels was contrary to art. 117 of the same treaty. The labour Court of Bremen referred the matter to the European Court of Justice in order to get a preliminary ruling as to whether the ISR provisions were in conformity with EEC law.¹⁵³ The European Court of Justice, in its decisions 72/91 and 73/91 held that these provisions were not contrary to EEC law.¹⁵⁴

¹⁵¹ Act for the introduction of an additional register for sea-going ships (that are taking part) in the international trade, of 23 March 1989 BGBl vol.1 p.550. (in German "Gesetz zur Einführung eines zusätzlichen Registers für Seeschiffe unter der Bundesflagge im Internationalen Verkehr - Internationales Seeschiffsregister - ISR). In effect, this Act amended the FlaggenRG by adding §§ 13a and 21(4).

¹⁵² see PRÜSSMAN - RABE, Vor 476 I A 1 f, DAS BÜRGERLICHE GESETZBUCH §630 Anh 1 para. No 213

¹⁵³ Vorlagebeschluss des Arbeitsgerichts Bremen von 9-10-1990, published in NJW 1991, p.2232

¹⁵⁴ see Europäische Zeitschrift für Wirtschaftsrecht 1993, p.288 at 290 para No 29.

According to § 7 of the FlaggenRG, if a ship entitled to fly the German flag is chartered¹⁵⁵ for at least one year to a person (natural or juristic) who is not German or is not resident or does not have its seat in Germany, the Minister of Transport can give permission to the ship to fly the flag of the nationality of the charterer for a period of time not exceeding two years. Section 11 of the same Act provides for the opposite case.

2. Discretion of the registrar

A. South African Law

If the registrar is satisfied, that the requirements of the Act preliminary to the registry have been complied with, he is, according to s. 10 of the 1988 Regulations, obliged to register the ship and issue a certificate of registry.

The registrar has the power to demand proof of ownership of the ship to his satisfaction (s. 20(3)MSA). The Act does not specify how far he can go in judging the validity of the documents submitted to him nor what is to happen in case he is not satisfied or his demands are not complied with. It is questionable, whether the registrar is entitled to deny that a person with South African passport or identity document is South African citizen, with the reasoning that the passport or ID should not have been issued, or whether he can deny the registration with the reasoning that the deed of sale is void or voidable because of lack of legal capacity or as sham.

In administrative law there is a presumption that, in the absence of evidence to the contrary, all formalities pertaining to an official act have been complied with.¹⁵⁶ Section 20(3), read in the light of this principle, suggests that the inquiry of the registrar cannot go beyond the

¹⁵⁵ Section 510 of the HGB which gives a definition of charter does not differentiate between charter, charter by demise, voyage charter or time charter and so the type of the charter does not seem to play a role for the application of ss. 7 and 11 FlaggenRG.

¹⁵⁶ see BAXTER pp.355-358, 738

formalities prescribed by s. 39 MSA. It seems that his only power in case of non-compliance is to abstain from registering.

The situation appears different with s. 12 MSA, which provides that the Minister may direct the proper officer to require evidence that the ship is entitled to be registered. The fact that the consequences for the non-compliance with this section are the same as for the unlawful assumption of South African national character (s. 66) or its concealment (s. 67), indicates that the inquiry of s. 12 can go much deeper than that of s. 20(3) and determine the validity and regularity of all prerequisites for the registration. If this is so, then the registrar, if he has any doubts about the validity of the documents submitted to him, is not entitled to proceed with a full inquiry, and can only seek the Minister's permission or order.

B. Greek Law

Section 37 of the R.D. of 10 July 1910, provides that the registrar, in case he denies to register a vessel because of most significant deficiencies, has to reject the application officially and make a report in the special book kept for that purpose. The decree does not specify what the term "most significant deficiencies" connotes.¹⁵⁷ It is accepted that the registrar can reject the application if some of the documents required by law are not submitted to him, but he cannot examine the validity and truthfulness of any documents submitted,¹⁵⁸ nor can he ask for or rely on any further documents or evidence than those submitted to him.¹⁵⁹ The registrar has to send a copy of his report to the State attorney of the first instance court, and he is obliged to follow his opinion unless he wants to refer the matter to the State attorney of the court of appeal, whose opinion the registrar has to follow without undue delay. The applicant can also refer the matter to

¹⁵⁷ In Greek "ένεκα ουσιωδεστάτων ελλείψεων"

¹⁵⁸ see the advisory opinion of the State Attorney of A.P. No 6 of 1939, and also of the State Attorney of the first instance court in Pireaus No 6 / 10-9-1971

¹⁵⁹ see the advisory opinion of the State Attorney of A.P. No 18 / 30-10-1965

the Court of Appeal or to the Arios Pagos.^{160,161} The registrar has only to follow the instructions of the State attorney and not of any officials in the administration.¹⁶² Therefore, he is deemed to exercise quasi judicial authority and his decisions (which are not administrative decisions) can be reviewed only by the civil and not by the administrative courts.¹⁶³

The applicant can also refer the matter to the State attorney of the court of appeal. Apart from deciding whether a vessel should be registered or not, neither the registrar nor the State attorney have the power to rectify mistaken entries to the register.¹⁶⁴ This is reserved only for the courts.

C. British Law

The broadening of the circle of persons qualified to own a British ship under the 1993 Act resulted to the broadening of the discretion of the registrar who now may, according to s. 2(3) of the Act, refuse to register a ship or terminate its registration if the requirements regarding the condition of it or its equipment so far as relevant to safety or any risk of pollution or to the safety, health and welfare of the persons employed or engaged on it are not met.

Following the scheme adopted in the 1983 and 1988 MSA, the 1993 Act transfers most of the detailed provisions relating to registration from the primary statutes to regulations.

These regulations give for the first time power to the registrar to rectify the register. According to s. 2(6) the registrar has this power

¹⁶⁰ in Greek Άρειος Πάγος, hereafter abbreviated A.P. This is the highest court of Greece in civil and criminal matters. It has jurisdiction only over legal problems and is bound to accept all facts as the Court of Appeal accepted them.

¹⁶¹ see the advisory opinion of the State Attorney of A.P. NO 24 / 24-6-1966

¹⁶² see fn.158

¹⁶³ see the decisions of the First Instance Court of Pireaus No 2137 / 1968 (three members) and No 1499 / 1979 (one member).

¹⁶⁴ see LYKOS, p.15-16, HAMILAKIS p.10, also the opinion of the State Attorney of the First Instance Court in Athens No 21634 / 31-3-1958, and of the A.P. No 19 / 20-9-1916.

when a clerical error has occurred or sufficient evidence is produced to satisfy him that the entry is incorrect.

The wording of the provision indicates that this is clearly a power and not a duty of the registrar. However, it does not make clear how extensive this power is.

3. Entries to the register.

A. South African Law

If the registrar is satisfied that all the requirements have been complied with then he is bound to enter the following particulars in the register:

- a) the name of the ship and the port where she belongs,
- b) the details contained in the tonnage certificate,
- c) the origin of the ship as stated in the declaration, and
- d) the name, address and occupation of the owner of the ship and the number of shares of each owner if more than one,

and shall, after such entry, issue to the owner a certificate of registry in the form set out in the 1988 Regulations.

Section 59 MSA and s. 26 of the 1988 Regulations provide for the inspection of the register by anybody and for the issue of certified copies of it upon payment of a prescribed fee.

B. Greek Law

If the registrar is satisfied, that the requirements of the act are complied with, he has to enter in the register the following particulars:

- a) name and type of the vessel;
- b) dimensions and tonnage;
- c) means of propulsion (and engine power, if applicable);

- d) the vessel's international call sign;
- e) name(s) and nationality of the owner(s)
- f) appointment of the process agent and its acceptance; and
- g) the title to the vessel.

The registration of these particulars is void and of no effect, if the particulars given for the vessel are not enough to identify it (s. 3 of the CPrML).

4. Certificate of registry

A. South African Law

On completion of the registration, the proper officer has to issue a certificate of registry in the form set out in Annex D1 of the 1988 Regulations, containing all the particulars entered in the register and stating the name of the master (s. 23 MSA). If there is a change of master, the name of the new master must be endorsed on the certificate (s. 27 MSA). The master has to deliver the certificate of registry to his successor (s. 187 MSA).

The certificate is granted for the lawful navigation of the vessel and so it must always be kept on board. Section 24 provides that it shall not be subject to detention and that any person that happens to possess it must, upon demand, deliver it to the person entitled to the custody thereof.

In case the certificate of registry is mislaid, lost or destroyed, the master of the vessel or any other person having knowledge of the facts of the case shall apply to the proper officer in writing for the granting of a new certificate of registry. If the application is made in a port other than the port of registry of the vessel, the proper officer at that port issues a provisional certificate. When the vessel returns to her port of registry, the provisional certificate has to be delivered to the proper

officer of that port who retains it and issues a new certificate of registry (s. 26 MSA, ss. 13,15 of the 1988 Regulations).

B. Greek Law

When a vessel is registered the registrar issues a certificate of registry. This contains all the particulars of the vessel and is the formal licence to fly the Greek flag. It also serves as evidence of ownership and must always be kept on board. A new certificate of registry can only be issued if the old one is lost or if the ship is sold or altered.

5. Transfer of registry

A. South African Law

The registry of a vessel can only be transferred if all the persons appearing on the register to have an interest in the ship as owners or mortgagees apply for such transfer (s. 36(1)MSA, s. 12 of the 1988 Regulations).

The application has to be made to the proper officer at the existing port of registry in writing. The proper officer at the new port of registry issues the new certificate once the certificate issued at the previous port of registry is delivered to him and the name of the new port of registry has been marked on the ship's stern (s. 36(2) MSA, s. 12(2)&(3) of the 1988 Regulations).

If the owner does not change the name of the port of register, he is liable to a fine or imprisonment for a period not exceeding six months (s. 313(2) MSA).

B. Greek Law

a) *transfer from registry kept by consular authorities.* A vessel which was bought in a foreign country can be registered in one of the registries kept by consular authorities.¹⁶⁵ In this case, the owner has to

¹⁶⁵ At present, such registries exist in London, New York and Tokyo. see HAMILAKIS, p.66

declare to the registrar in which Greek port he intends to register his vessel, and the registrar has to send to this port without undue delay all the documents regarding the vessel.

This type of registration is considered to have full effect and the old documentation is kept after the transfer of the registry.

b) transfer from another Greek port Every person that owns more than half of the shares in a vessel can apply for the transfer of the registry in another Greek port. If the vessel is mortgaged, the consent of the mortgagees is needed. The registrar in the new port of registry receives the application and sends a copy to the registrar of the port where the vessel is registered, who has to send a copy of all particulars to the new registry. When the vessel is registered in the new registry, the old registration is cancelled.

6. Liability of Registrar.

A. South African Law

If the registration is held to be essential for the transfer of ownership, and given the usually high value of the vessels he has to register, it is possible that a mistake or a wilful act of the registrar can cause a significant loss to the owner of the vessel. The MSA does not regulate the liability of the registrar and (as far as I could ascertain) there is no case law.

As we have seen, the registrar has nearly no discretion and therefore practically there will be no case where he will be liable for wrong exercise of his discretion.¹⁶⁶

This was also the case with former British law. At the time, when the registration was essential for the transfer of ownership there was no provision regulating the correction of any mistakes in the register or

¹⁶⁶ In the case of s. 12, the registrar obeys orders of the Minister and consequently one has to apply the principles regulating the liability (if any) of the Minister.

the liability of the registrar for such mistakes.¹⁶⁷ In the absence of any such provision this jurisdiction was held to rest in the Court of Chancery.¹⁶⁸

If the general principles of the law of delict are applied, then the registrar will be liable for his wilful act or neglect.¹⁶⁹

B. Greek Law

If the registrar, by an act or omission in the performance of his duties, causes a loss to the applicant or a third person, he is liable, according to the provisions of the statute regulating mortgages (s. 19 of the R.D. of the 10 July 1910). Mortgages are regulated now by the civil code, s. 1344 of which provides that the registrar is liable for damages caused by his acts or omissions in the accomplishment of his duties. The registrar of vessels is a paid¹⁷⁰ official of the administration and so the State is liable for his acts or omissions even if they are not culpable.¹⁷¹

C. British Law

The approach of the new Act leaves open or rather re-opens the question of the liability of the registrar. The Act has repealed the relevant section of the 1894 MSA which provided that the registrar shall only be liable for his wilful act or neglect. Under the old regulation, the courts have been willing to order restoration of possession or ownership in case the entries in the register did not

¹⁶⁷ Later, s. 65 of the 1894 MSA provided that the registrar is liable only for wilful act or neglect.

¹⁶⁸ see 'HOLDERNESS v. LAMPORT', 1861 Law Journal vol. 30 Chancery p.489 at p. 490

¹⁶⁹ This can be compared with the liability of the registrar of deeds which is regulated by s. 99 of the Deeds Registries Act 47 of 1937. According to that provision the registrar or any other officer of the deeds office or the Government are not liable for any act or omission, unless such act or omission is mala fide or the registrar has not exercised reasonable care and diligence in carrying out his duties.

¹⁷⁰ In certain areas of Greece persons with a law degree are appointed as registrars. These registrars do not receive a monthly salary from the State but only a percentage from the fees paid for the transactions. Hence the distinction between paid and not paid registrars. In Greek έμισθοι φύλακες υποθηκών and άμισθοι φύλακες υποθηκών

¹⁷¹ Section 13 of the L.D. 4201/1961, read with s. 105 subs.(1) of the introductory statute to the Civil Code.

resemble the true situation, albeit the absence of a specific provision giving them such jurisdiction.¹⁷² Time will show what view the courts will adopt now, in case the registrar does not rectify a mistake although he has such power.

7. Deletion from registry

A. South African Law

A South African vessel is deleted from the register when she ceases to be a South African ship or when she loses permanently the attributes of a ship.

If the vessel is lost, burnt or broken up, the registered owner shall report the event to the proper officer who has to close the register (s. 29 MSA). A vessel so deleted from the register, cannot be re-registered until she has been surveyed and certified to be seaworthy (s. 37 MSA).

If the vessel is sold to a non-qualified person, or if the company that owns the vessel ceases to be a South African company, the registered owner has to notify the proper officer who has to delete the vessel subject to any unsatisfied mortgages (s. 29 MSA).

B. Greek Law

1. vessel lost or scrapped

When a vessel is lost or scrapped, it is deleted by the registrar after an application by the owner or after an order from the Minister of Merchant Marine (s. 18(3) CPuML). Another case provided for by the same article is the lack of information about the vessel for more than six months if there is reason to believe that the vessel is lost, but this seems to be rather obsolete.

¹⁷² see LMCQ 1994, p.149 and the cases cited there. One can add to these cases 'THE ROSE', Law Reports, Admiralty and Ecclesiastical Cases, vol.4, p.6 where Sir Robert Phillimore described this jurisdiction as "novel".

The vessel is deleted after an examination of the facts leading to the deletion.

The existence of mortgages does not prevent the deletion of a lost or scrapped vessel, but the mortgagees can demand immediate payment of the debt.¹⁷³

2. transfer of the vessel

When the ownership in a vessel changes, the old as well as the new owner can apply for the deregistration of the vessel, and the new owner can apply for the re-registration, if he is qualified.

The applicant for registration has to submit an application, the BoS, the certificate of nationality of the vessel (if it is not lost with the ship) and certificates from certain Greek authorities that the vessel has no debts (taxes and crew members social security).

The regulation of the obligation of the applicant to submit these certificates is not particularly clear and so two controversial points arise, namely whether the certificate is needed for the registration of a transfer in all cases of transfer (private or judicial sale), and whether it is needed in case the buyer wants merely to deregister the vessel in order to register her under another flag.

A first observation that can be made, is that the relevant statutes provide that the certificates are needed for the registration of the transfer. Consequently, depending on whether the certificate of deletion is a prerequisite for the registration of the transfer, these certificates are also needed for the deletion of the vessel from the registry.

As far as taxes are concerned, s. 19 subs.1 of statute No 27/1975 provides that the registration of a transfer is prohibited if the applicant

¹⁷³ see the advisory opinion of the legal department of the Ministry of Merchant Marine No 1031/1987, published in *Shipping law Review* vol.17, p.87, and the opinion of the deputy state attorney of A.P. No 5/1973. Also ss. 194 & 198(4) of the CPrML.

does not submit a certificate of the competent tax authority stating that there are no outstanding taxes.

This provision covers only the registration of the transfer of the vessel.

The tax authorities certificate is necessary in case of a contractual transfer, provided that the buyer is personally liable for these payments. The statute provides for the liability of the seller in all cases and also makes the buyer liable for the payment of taxes which were due before the transfer, if the vessel is registered under a foreign flag after the transfer.

In case of a judicial sale, it is submitted that the buyer has no personal liability for taxes because he acquires the vessel free from any liens and encumbrances.

It is accepted, that taxes accrue until the registration of the transfer in the book of register.¹⁷⁴

Section 88 subs. 5 of Act 792/1978 introduced a prohibition similar to that of s. 19 subs. 1 of 27/1975 in case the applicant does not submit a certificate showing that the vessel has no debts for social security payments. These sections were interpreted similarly until statute No 1711/1987 came into force.

After statute 1711/1987, s. 88 subs. 5 of Act 792/1978 prohibits the registration of the adjudication record in the register (this action would confer ownership to the person that gave the highest bid in the auction), unless it is accompanied by a certificate of NAT showing that the vessel has no debts for social security payments for seamen.¹⁷⁵ This certificate is needed even if the auction took place outside

¹⁷⁴ see the decision of the Council of State 1425/1988

¹⁷⁵ This view was confirmed by the First Instance Court of Pireaus (three members) in its decisions 521/1990 and 870/1990 and by the Court of Appeal in Pireaus in its decision 87/1991.

Greece. Most probably, this provision will be incompatible with the law of the country where the auction took place.¹⁷⁶

In case a vessel is to be registered in another country, it falls to be decided by the law of that country whether the certificate of deletion is necessary and whether the new registration is valid or not. (see also *supra*, p.19)

However, according to s.88 subs.2 of the Act 792/1978, Greece does not accept the validity of such registration and does not recognise the change in the nationality of the vessel.¹⁷⁷ Most probably,¹⁷⁸ the consequence of that is that if the vessel comes within the limits of the Greek jurisdiction it can be arrested for these debts and sold by auction.

It is submitted that there are two exceptions from the rule that makes these certificates necessary. First, s.18 of the CPuML provides in subs. 1 that a ship must be deleted from the Greek registry if she loses her Greek national character. Secondly, in case of ships registered according to L.D. 2687/1953, clause 24 of the standard Ministerial decision which approves the registration, provides that in case any future owner of the vessel is not, according to the informations of the administration and to its unfettered discretion, representing Greek interests, the approval ceases to be valid and the vessel is deleted immediately from the register.¹⁷⁹ Apart from that, the Ministerial decision can provide and invariably does, that the liability of the ship owner for the payments to NAT can be limited to a certain amount of money. This view is supported by the legal department of the Ministry of Merchant Marine in its advisory opinion No 865/1988 and by the Court of Appeal in Pireaus in its decision 850/1983.

¹⁷⁶ see ANTAPASSIS, MARITIME LIENS §4 II p.38f, p.65 fn.13

¹⁷⁷ Section 29(3) of the South African MSA provides the same consequences for the case a mortgaged vessel is sold without the written consent of the mortgagee.

¹⁷⁸ I use the word probably because I am unaware of any such case before the Greek Courts.

¹⁷⁹ see ANTAPASSIS, APPLICABLE LAW, p.87 fn.205

The main argument is that the non payment of the debts and the consequent non-deletion of the vessel would vitiate the provision that only ships belonging to Greeks can be registered.

IX. REGISTRATION OF MORTGAGES

A. South African Law

Section 3 of the 1840 Admiralty Court Act gave the Admiralty Court full jurisdiction to take cognizance of all claims in respect of any mortgage, provided that the ship or the proceeds thereof were under arrest. Section 11 of the 1861 Admiralty Court Act confined the jurisdiction of the court to duly registered mortgages, but abolished the requirement that the ship or the proceeds thereof had to be under arrest.

At the time when the two acts were passed, equitable interests in ships were not recognised by law and consequently the jurisdiction of the court did not extend to such interests. In the decision in 'THE LIVERPOOL BOROUGH BANK v. TURNER', which was given after the 1840 Act and shortly before the 1861 Act, the court held that it could not give effect to a mortgage unless all the formalities required by the statute (1854 MSA) had been complied with. After that decision, and in order to mitigate the inequitable results that it might have, the legislature passed the 25&26 Vict. c.63 (1862 MSA), s. 3 of which recognised equitable interests in ships.¹⁸⁰

The 1862 Act did not confer jurisdiction to the court of admiralty over unregistered mortgages. However, if we accept that the 1861 Act did not repeal the 1840 Act but merely supplemented it and we interpret the 1840 Act in the light of the 1862 Act, it seems that the 1840 Act covered unregistered mortgages after 1862. Consequently, according to s. 6 of the AJRA, one has to apply English law in respect of any mortgage, which accepts unregistered (equitable) mortgages. The South African MSA contains detailed provisions about registered

¹⁸⁰ cited in the Appendix

mortgages and therefore the application of English law is confined to unregistered mortgages.

Section 47 MSA provides that a mortgage is created by the deed of mortgage which must be in the prescribed form. The wording of section 47 MSA indicates that the registration does not affect the validity of a mortgage. However, there is no procedure available to create a mortgage on a ship which is unregistered (either because it is under construction or because its tonnage is less than twenty-five tons).

Section 1 (iv) d of AJRA declares any dispute about mortgages to be a maritime claim. If this provision is held not to apply on mortgages on unregistered vessels or mortgages not created in the prescribed form, then these mortgages, given that they were within the jurisdiction of the English admiralty court, are covered by s. 1(iv)(dd) AJRA.

In this case, the English common law principles will apply. The effect of the mortgage in South African law will be that it will rank in the order of 11(4)(d) or as any other maritime claim in the order of s. 11(4)(f) AJRA.

A mortgage created according to s. 47 MSA and s. 23 of the 1988 Regulations will be paid by the proceeds of a sale in execution (s. 11 subs. (1)(a), (2) and (4)(d) AJRA). The ranking of that claim among any others falling in the same category (s. 11(4)(d) AJRA), is regulated by s. 11(5)(d), which in turn refers to s. 47 MSA as the law of the flag. This section provides that the mortgages shall rank according to the order in which they were registered and so in effect the registration regulates the priority of mortgages.

Another effect of the registration is that the mortgagee can prevent the sale of the vessel. Section 29 subs.(1)(b) makes the consent of the mortgagee a prerequisite for the sale of the vessel and subs.(3) goes even further by providing that if subs.(1)(b) is not complied with, the

South African forum regards the sale as invalid and retains the right to intervene and cause the vessel to be sold in a judicial sale.

In case of an unregistered mortgage the mortgagee cannot prevent the sale of the ship or the issuing of a certificate of sale. It appears therefore that in case of a dispute about a mortgage the registry does not play a role, except in case a mortgaged vessel is sold and there is a dispute about the validity of the registration and hence for the necessity of the mortgagee's consent.

A mortgage is deleted from the register when the debt is discharged. In this case the mortgagee has to sign the 'receipt for mortgage money' in the form set out in annex K of the 1988 Regulations. The mortgagor presents the receipt to the registrar who deletes the mortgage from the register.

A mortgage is also deleted when the ship is lost or sold in a judicial sale (s. 9(3) AJRA). The jurisdiction of the court has to be contentious.¹⁸¹

B. Greek Law

All port offices that keep a register of ships keep also a register of mortgages.

There are two types of mortgages in Greek shipping law namely the 'simple' and the 'preferred'. The simple is regulated by the CPrML and the Civil Code and the preferred by a special legislative decree (No 3899/1958). The basic characteristic of the mortgage is that it gives the creditor priority in case of a judicial sale. The consent of the mortgagee is necessary for the sale of the vessel or in order to change the name or port of registry of the vessel. In case of the preferred mortgage, the mortgagee has the right to take the management of the vessel.

¹⁸¹ In the case of 'CHASTEAUNEUF v. CAPEYRON and ANOTHER', *Aspinall's Maritime Law Cases* vol. 4 (1878 - 1882) p.489, it was held that the sale of a vessel by licitation does not

In both cases, the mortgage is created by its registration in the book of mortgages, in the same district where the vessel is registered (s. 197 CPrML, s. 22 of the L.D. 3899/1958). The priority is regulated according to the order of registration.

If a vessel at the time of its first registration in Greece is already mortgaged, the mortgage takes effect in Greek law provided that it was created by registration in a public book and was registered in the Greek registry within sixty days from the registration of the vessel (s. 203 CPrML).

The mortgage is deleted from the register with the consent of the mortgagee or by virtue of a judicial decision or when its registration was for some reason void.

X. REGISTRATION OF ATTACHMENTS

Greek Law¹⁸²

Every port office keeping a register of ships and mortgages, keeps also a book of attachments. This is a public book and everybody can inspect it and apply for certified copies of its contents.¹⁸³

There are two types of attachment in Greek law.

a) as a security measure: the vessel is attached or released by virtue of a judicial decision. The court will order such an arrest if the ownership in the vessel is disputed, or if there is reason to believe that, by the time the final court decision is given, the debtor will have disposed of his property. The attachment is effected when the decision is served to the owner of the vessel (s. 713CPC). The attached vessel cannot be sold and is not allowed to depart for a voyage (ss. 715, 720 CPC).

b) for purposes of execution of a judgement: when a final judgement is given and the debtor does not satisfy the creditor within three days from the service of the decision, the creditor can attach the property of the debtor in order to sell it by auction (s. 926(1) CPC). The attachment is effected when the bailiff proceeds in situ and draws up a record of attachment in the presence of an adult witness (ss. 992(1), 993(1) CPC). The attached vessel cannot be sold or mortgaged (s. 997 CPC).

Once the vessel is attached, the bailiff serves to the registrar the decision or the record of attachment and the registrar is obliged to register it. He has the power (and duty) to ensure that the particulars

¹⁸² In South African law, unlike Greek law, the arrest or attachment of a vessel does not need to be registered in the ship's registry. Therefore only Greek law will be examined in this chapter.

¹⁸³ see LYKOS, p.109-110

of the vessel as they appear in the ship's register and in the decision or the record of attachment are identical.¹⁸⁴ He has no power to examine any other elements. The attachment as such does not depend on its registration. However, its consequences take effect from its registration.

All the aforementioned prohibitions are characterised as 'relevant' and not 'absolute'.¹⁸⁵ By that is meant that the sale can be cancelled at the instance of the person that attached the vessel and the creditors that filed caveats (s. 997(1)CPC) and that a mortgage will be void as far as the same persons are concerned. These consequences take effect from the moment the attachment is registered.

¹⁸⁴ see HAMILAKIS, p.69

¹⁸⁵ in Greek "σχετική ακυρότητα"

APPENDIX

A. GREEK LAW

1. CIVIL PROCEDURE CODE

Section 713

(1) The conservative arrest of a ship, aircraft or real rights on them in the hands of the debtor or a third person is carried out by the service of a copy of the decision that orders the arrest to the creditor. If an arrest of a ship registered in Greece is at issue or an aircraft that is in a record kept in Greece, a copy of the decision is served to the authority that keeps the registry or the record. If the conservative arrest is in the hands of a third person, a copy of the decision that orders it, must be served to the third person.

(2) The order (*to the bailiff*) for the service of a copy of the decision that orders the conservative arrest, must describe the ship, aircraft or the real right that is arrested and the amount of money for which the conservative arrest is made.

(3) The authority that keeps the registry or the record of aircraft registers the conservative arrest in the ships registry or the aircraft record; for the registration, the extinction and the order of registrations the provisions of the execution arrest apply.

Section 715

(1) The disposition of the attached things by the person against whom the execution is levied is prohibited and invalid against the person that caused the attachment. By money claims the prohibition applies only up to the sum for which the attachment was made.

(2) The results of the attachment mentioned in paragraph 1 come into effect:

a) in case of attachment of movables or real rights on movables in the hands of the debtor, from the attachment, if he was present, otherwise from the service by the bailiff according to section 711.

b) in case of an attachment of claims or movables in the hands of a third person, from the service of the document that announces the attachment to the person against whom it is, according to section 712.

c) in case of an attachment of an immovable, a ship, an aircraft, or a real right on them from the service to the debtor of the decision that orders the attachment.

(3) In case of a conservative arrest of an immovable, a ship, an aircraft or of a real right on them the nullity mentioned in paragraph 1 is valid against third parties (*i.e. can be raised against them*) only if at the time of the

disposition the attachment was registered in the book of attachments, in the ship's register or in the aircraft's record.

(4) In case of an attachment of a claim in the hands of a third person, the paying off of the claim by the third person or its set off with a subsequent claim, is prohibited and is invalid against the person that caused the attachment. In case of an attachment of movables in the hands of a third person the restoration or disposition of the attached is prohibited and is invalid in favour of the person that caused the attachment.

(5) Within thirty days from the service of the document for the attachment to the debtor, the creditor is obliged to introduce legal action against the debtor for the main claim addressed to the court that has subject matter jurisdiction. If this period elapses in vain the security measure is ipso jure set aside. It is not necessary for an action to be introduced if such action is already introduced, or the conservative arrest was based on a judicial order of payment of a debt or if such an order is served within the aforementioned period.

Section 720

(1) A ship that is conservatively arrested is not allowed to sail and an aircraft to take off.

(2) The port or airport master is responsible for the departure of the ship or the take off.

(3) The court that has jurisdiction according to section 702 can, by application of anybody that has a legitimate interest, allow one or more voyages of the ship that is conservatively attached or one or more flights of the aircraft that is conservatively attached, on any conditions it would think fit and in any case with insurance of the ship or aircraft for an adequate sum.

Section 926

(1) After the service of the order no other execution act can be carried out, by nullity sanction, before three days have elapsed from the service. This period must be observed even if the execution is continued against the heir or the curator of the estate.

(2) When one year from the service of the order has elapsed, no other execution act based on it can be performed.

EIGHTH BOOK - EXECUTION
FIFTH CHAPTER - ATTACHMENT OF DEBTORS' IMMOVABLES,
SHIPS OR AIRCRAFTS

Section 992

(1) An immovable in the ownership of a debtor, as well as a real right of the debtor on an immovable can be attached. The rules for the attachment of an immovable apply also on the attachment of rights on which the rules for the immovables apply as well as on the attachment of ships and aircrafts.

(2) The attachment of an immovable extends to its constituent parts, and to its accessories¹ only if these are explicitly included. If the accessories are not included in the attachment of the immovable they can be attached according to the rules for the attachment of movables.

(3) If the attached is insured, the attachment extends to the insurance sum.

1. For the definition of constituent parts and accessories see sections 947ff of the civil code.

Section 993

(1) The attachment is effected (*i.e. comes into existence*) when it is drawn up in a record by a bailiff in the presence of an adult witness. The mortgaged immovable can be attached either against the debtor or a third party owner or against the third party that has possession of the thing by virtue of a lawful title, after the service of the order ¹ to the debtor and the third party. The time period of section 926 starts from the last service.

(2) The provisions of paragraphs 1b and 2 to 4 of section 954 also apply. The attached immovable must, after the bailiff proceeds in situ, be described exactly as to its nature, place, boundaries and area, together with the attached constituent parts and accessories so that there is no doubt about its identity.

1. For the definition of the order see section 924. It is the formal order to the bailiff to proceed with the acts of execution (see also 927) and is regarded as the last chance of a debtor to pay his debt voluntarily.

Section 997

(1) The disposition of the attached by the debtor is prohibited and is inoperative in favour of the person that caused the attachment and the creditors that have filed ¹ their claims; if a mortgaged immovable is at issue it is invalidly disposed of also by the third party, owner or possessor.

(2) The prohibitions of paragraph 1 become effective

a) for the debtor, as soon as the copy or the summary of the attachment record is served to him according to section 995.

b) for the third party, owner or possessor, as soon as the copy or the summary of the attachment record is served to him according to section 995.

c) for third parties only after the registration of the attachment in the book of attachments according to section 995 and provided that the services to the third party, owner or possessor, have been carried out.

(3) The transcription or registration of a mortgage² in the book of mortgages, that took place after the registration of the attachment in the book of attachments cannot be invoked against the person that caused the attachment and to the creditors that have filed their claims notwithstanding the kind of title on which the mortgage is based. The conversion of a prenotice³ to a mortgage that takes place after the registration of an attachment is valid also against the creditor that caused the attachment and the creditors that have filed their claims.

(4) If, on the same day, a registration of an attachment and a transcription or a registration of a mortgage on the same immovable concur, the one that is registered earlier, even for a minimal time, is preferred.

(5) After the registration of an executions attachment in the book of attachments the imposing of another executions attachment on the same immovable or the registration of such attachment is forbidden.

1. For the filing of claims of other creditors see section 972.

2. For the mortgage and its creation see sections 1257ff of the civil code.

3. For the definition of a prenotice see sections 1274ff of the civil code.

CODE OF PUBLIC MARITIME LAW (L.D. 187/1973)

Section 3

(1) Ship, according to this code, is any vessel designed to move on the water for the carriage of persons or things, towage, salvage, fishing, recreation, scientific research or other purpose.

(2) The ships, depending on their means of propulsion, their specific use, the length of their voyages, or on other criteria are distinguished on different categories according to the provisions of a presidential decree.

Section 5

(1) Without affecting the application of special statutes, (it is hereby ordered that) ships, more than the half of the shares in which are owned by Greek citizens or Greek companies which in turn are owned by Greeks by the same percentage, are recognised as Greek on application of the ship owner(s) accompanied by the title of ownership.

(2) If the document transferring the ownership of the vessel was signed abroad, it must be authenticated by the consular authorities in order to be registered in the ship's register.

(3) ... (refers to the characterisation of vessels as passenger ships)

Section 6

(1) The recognition of the vessel as Greek is effected by the registration in a registry kept by a port authority in Greece or by such authority abroad, which is appointed by a presidential decree, issued on recommendation of the Ministers of Foreign Affairs and Merchant Marine.

In other respects the provisions of the code of private maritime law apply.

(2) Ships registered in registries kept by Greek port authorities abroad have to be re-registered in Greece within a year.

(3) The name of the ship is chosen by the ship owner.

Section 15

(1) In time of war or army mobilisation, general or partial, it can be ordered by presidential decree, issued on recommendation of the cabinet council, that the approval of the Minister is essential for the transfer or mortgaging of ships, wholly or partially, to foreigners of certain nationalities, for a certain period of time or regarding certain types of ships.

(2) For the contractual transfer or the mortgaging of passenger vessels, car ferries and tugs to foreigners, the approval of the Minister is always required. As far as floating constructions (according to CPrML) are concerned, the approval of the Minister is required for the transfer to foreigners.

Section 16

(1) The Greek nationality of a vessel is lost when the requirements prescribed for its acquisition by section 5 are lost.

(2) If the ownership of a ship is contractually transferred to foreigners so that they have exactly fifty percent, the transfer of ownership is void by one percent if the transferred percentage is more than one percent and by the transferred percentage if it is exactly one percent or less.

(3) If the transfer to foreigners is not contractual, the percentage transferred is reduced according to the above subsection. In this case the percentage by which the share of the foreigners is reduced increases the share of the Greek citizens by analogy to the percentage of the shares that each of them has in the ship against a remuneration determined by the first instance court in Pireaus or by the first instance court of the port of registry of the ship.

CODE OF PRIVATE MARITIME LAW (ACT No 3816/1958)

Section 1

Ship, according to this statute is any vessel having net tonnage of at least ten tons, designed to move on the sea by its own means of propulsion.

The provisions of the third, fourth, sixth, seventh, twelfth, thirteenth, and fourteenth titles of this statute apply by analogy on any other floating construction.

Section 2

The Greek ship is registered in the registry of the State.

The registration states the name and the nationality of the ship owner, the appointment of a process agent resident in Greece, the title of ownership, the name of the ship, the international call sign, the dimensions and tonnage according to an official admeasurement, the means of propulsion and, if the ship is a steamship, the power of the engines.

The registration is dated and signed by the keeper of the register.

A certified copy of the title of ownership is handed to and kept by the keeper of the register.

Section 3

The registration is void if it does not manifest the identity of the ship.

Section 4

A ship under construction can be registered.

A ship under construction exists also when the final ship-building contract or a written declaration from a person running a ship-building business in Greece that he has decided to build a ship for his own account, is submitted (to the registrar).

The registration states the ship yard, the place of ship building, the name and the nationality of the person for whose account the ship is built, the appointment of a process agent resident in Greece, the material of which the ship will be built, its name, its proposed dimensions and tonnage, the means of propulsion and, if the ship is a steamship, the type and power of the engine.

Section 6

For the transfer of ownership of a vessel an agreement between the owner and the transferee is required to the effect that the ownership is transferred for a legal cause. The contract must be in writing and registered

in the ships registry. The transfer of the ownership does not occur unless the registration mentioned in the above paragraph is carried out.

Section 9

The law of the State of which the ship is flying the flag regulates the real rights in it.

Section 197

The mortgage is created by its appropriate registration in the book of mortgages in the district where the vessel is registered.

Section 203

A mortgage, existing on a vessel at the time it acquires the Greek nationality, remains valid, provided that according to the law of the former flag it was created by registration in a public book and was registered in the Greek book of mortgages within sixty days from the registration of the vessel as a Greek vessel.

Section 285

If the insurer does not reject the right to abandon within thirty days from the service of the notice of abandonment or if this right is judicially recognised, all the rights in the abandoned things are transferred to the insurer. The transfer is effected from the service of the notice of abandonment.

The insured is obliged to give to the insurer the available information and deliver to him all the evidence he possesses.

Section 292

A person possessing a vessel for three years bona fide and with a title appropriately registered becomes its owner.

A person possessing a vessel for ten years becomes its owner.

ROYAL DECREE OF 10/17 JULY 1910

Section 1

The register books, the books of mortgages, the books of record and the books of attachments are books bound in volumes, similar, of 300 hundred pages each, numbered and signed before their use on every leave by the presiding judge of the first instance court in Athens, who signs and dates at the end of each volume a notice showing the number of pages. The keeper of the book writes in the first page the number of the volume. At the end of

each volume there is an alphabetical index of the names of the ships registered in that volume which refers to the relevant page. These books are kept according to the forms attached to this decree.

All these books are supplied free of charge by the Ministry of Merchant Marine.

Section 7a

The registrar of ships and the registrar of mortgages keep by chronological order and serial number a special book where they register, as soon as they receive them, all the applications for any registration in the register of ships, in the register of mortgages and in the register of attachments. The serial number of the special book must be written immediately on the application.

Each page of this special book is divided in five columns. In the first, the registrar notes the serial number, in the second the delivery date of the application, in the third the name or the company name of the applicant, in the fourth the type of registration and in the fifth the name and the registry number of the vessel.

Section 19

If the registrar of mortgages thinks that an application for registration must be rejected because of lack of the particulars required by law, he rejects it and draws up a record for the rejection which he registers in the special book kept by him. In other respects, the provisions of s. 791 of the Civil Procedure Code are applicable.

The liability of the registrar is regulated by the provisions of the Act regulating mortgages.

ROYAL DECREE OF THE 25/30 OCTOBER 1919.

Section 1.

1. Competent authorities for the recognition of vessels as Greek (registration) according to s. 5 of the Code of Public Maritime Law ratified by the Legislative Decree 187 / 1973 are:

a) all central port offices, all port offices and the secondary port offices of Ithaca and Hydra,

b) the consular port offices of London of UK, New York of the US and Tokyo of Japan,

c) all the secondary port offices (apart from Ithaca and Hydra) for ships of gross tonnage of up to 60 tons (class A).

2. Competent for the recognition of fishing vessels as Greek (registration) are also the port stations referred to in the Royal Decree of the 20 May 1949.

CIVIL CODE

(the sections of the Civil Code are taken from the translation by Mr. C. Taliadoros, published in 1982)

Section 11

An act shall be formally valid if its form is in conformity with the provisions as to form of the law governing the substance of the act or of the law of the place where the act was concluded or of the national law of all the parties to the act.

Section 948

The ground and its constituent parts are immovables. All that are not immovables are movables.

Section 1344

A registrar of mortgages shall be liable for damages in regard to a person who suffered prejudice as a result of an act or omission in the accomplishment of the obligations incumbent on such registrar.

B. GERMAN LAW

CIVIL CODE

Para. 929a

(1) For the transfer of ownership of a sea-going ship or of a share in such a ship, which is not registered in the ships' register, the delivery is not required, if the owner and the transferee agree that the ownership shall pass immediately.

(2) Every party can, at his cost, demand that a deed of sale, attested by a public notary, be issued to him.

ACT FOR THE RIGHTS IN REGISTERED SHIPS AND SHIPS
UNDER CONSTRUCTION

(GESETZ ÜBER RECHTE AN EINGETRAGENE SCHIFFE UND
SCHIFFSBAUWERKEN)

Para. 2

For the transfer of ownership of a ship registered in the register of sea going ships, it is required and sufficient that the owner and the transferee agree that the ownership shall pass to the transferee.

Every party can, at his cost, require that a deed of sale, attested by a public notary, is issued to him.

Para. 15

It is presumed, that the person registered as the owner in the ship's registry is the owner of the ship.

If a mortgage or another right or a usufruct in a ship is registered in the ship's register for the benefit of a person, it is presumed that that person has the right.

If a registered right (subs. 1&2) is deleted, it is presumed that it does not exist any more.

Para. 16

The contents of the register are considered to be correct to the benefit of a person who acquires by contract ownership or a mortgage or another right or a usufruct in a ship, as long as they refer to these rights, unless an objection against their correctness is registered (in the register) or the inaccuracy (of the register) was known to the transferee.

If the right of the transferor (to transfer) is restricted to the benefit of a certain person in respect of a certain right, this restriction is valid against the transferee only if it is shown by the ship's register or known to him.

In case the registration is essential for the transfer of the right, then the crucial time for the knowledge of the transferee is the time when he applies for registration or, if the agreement comes later into existence, the time of the agreement.

ACT FOR THE LAW OF THE FLAG OF SEA-GOING SHIPS
AND FOR THE FLYING OF FLAG OF INTERNAL WATER SHIPS

(GESETZ ÜBER DAS FLAGGENRECHT DER SEESCHIFFE UND DIE FLAGGENFÜHRUNG DER BINNENSCHIFFE BGBl 1990 I, 1343)

Para. 7

(1) If a sea going ship is chartered to a person (natural or juristic) who is not German or is not resident or does not have its seat in Germany¹ for at least one year and in his own name, the Minister of transport can permit that the ship flies another flag instead of the German flag the flying of which is allowed according to the foreign governing law, for a certain period of time not exceeding two years and with the proviso that the permission can be cancelled.

(2) In case of sea-going ships which have a certificate of nationality or a provisional certificate of nationality the permission becomes effective when an entry is made on the certificate.

(3) The owner has to notify the administration of any change of the prerequisites for the granting of such permission without undue delay.

(4) As long as the permission is valid, the right to fly the German flag cannot be exercised.

¹ The provision refers to the area of application of the German constitution ("im Geltungsbereich des Grundgesetzes").

C. BRITISH LAW

ADMIRALTY COURT ACT, 1840.

Section 4. Court to decide questions of title, etc.

The said Court of Admiralty shall have jurisdiction to decide all questions as to the title to or ownership of any ship or vessel, or the proceeds thereof remaining in the registry, arising in any cause of possession, salvage, damage, wages, or bottomry, which shall be instituted in the said court after the passing of this Act.

26 Geo. III c.60 An Act for the further Increase and Encouragement of Shipping and Navigation.

Section III

And whereas it is highly expedient that the Provisions made for the Registry of Ships and Vessels by an Act, made and passed in the seventh and eighth Years of the Reign of his late Majesty King WILLIAM the Third (intituled, An Act for preventing Frauds, and regulating Abuses in the Plantation Trade), should be altered and amended, and that the same should be extended and applied to Ships and Vessels other than those which are therein particularly described; be it therefore enacted, That all and every Ship or Vessel having a Deck, or being of the Burthen of fifteen Tons, or upwards, belonging to any of his Majesty's Subjects in Great Britain, or Guernsey, Jersey, and the Isle of Man, or of any of the aforesaid Colonies, Plantations, Islands, or Territories, shall, from and after the respective Times hereinafter expressed, be registered in Manner herein after mentioned; and that the Person or Persons claiming Property therein shall cause the same to be registered, and shall obtain a Certificate of such Registry from the Collector and Comptroller of his Majesty's Customs in Great Britain, or the Isle of Man, or from the Governor, Lieutenant Governor, or Commander in Chief, and Principal Officer or Officers of his Majesty's Revenue of Customs, residing in the Islands of Guernsey or Jersey, or in any of the said Colonies, Plantations, Islands, or Territories, respectively, in Manner herein after directed; and that the Form of such Certificate shall be as follows; videlicet:

In Pursuance of an Act, passed in the twenty-sixth Year of the Reign of King GEORGE the Third, intituled, An Act [*here insert the Title of the Act, the Names, Occupation, and Residence of the subscribing owners*], having taken and subscribed the Oath required by this Act, and having sworn that

he [or they], together with [Names, Occupation and Residence of non subscribing owners], is [or are] sole owner [or owners] of the Ship or Vessel called *The* [Ship's Name], of [Place to which the Vessel belongs], whereof [Master's Name] is at present Master, and that the said Ship or Vessel was [when and where built, or captured, and Date of Condemnation]; and [Name and Employment of the Surveying Officer] having certified to us that the said Ship or Vessel is [whether British, Foreign, or British Plantation built], has [Number of Decks] Decks, and [Number of Masts] Masts; that her Length, from the Fore Part of the Main Stem to the After Part of the Stern Post aloft, is [Number of Feet and Inches], her Breadth at the broadest Part, whether above or below the Main Wales [Number of Feet and Inches], her Height between Decks [Number of Feet and Inches, if more than one Deck and if not, then the Depth of the Hold [Number of Feet and Inches], and admeasures [Burthen] Tons, that she is a [Kind of Vessel and how built], has [whether any or no Gallery] Gallery, and [Kind of Head, if any] Head; and the said subscribing Owners having consented and agreed to the above Description and Admeasurement, and having caused sufficient Security to be given, as is required by the said Act, the said [Kind and Name of the Vessel] has been duly registered at the Port of [Name of the Port].

Given under our Hands and Seals of Office, at the Custom-house, in the said Port of [Name of the Port], this [Date] Day of [Name of the Month], in the Year [Words at Length].

Section XVI

And whereas the Provisions made in and by the said recited Act, touching the Indorsement on Certificates of Registry, in case of any Alteration of the Property in any Ship or Vessel, in the same Port to which the Ship or Vessel belongs, have been found insufficient; be it therefore enacted by the Authority aforesaid, That in every such Case, besides the Indorsement required by the said recited Act, there shall also be indorsed on the Certificate of Registry, before two Witnesses, the Town, Place, or Parish, where all and every Person or Persons to whom the Property in any Ship or Vessel, or any Part thereof, shall be so transferred, shall reside; or if such Person or Persons usually reside in any Country not under the Dominion of his Majesty, his Heirs and Successors, but in some British Factory, the Name of such Factory of which such Person or Persons is or are Member or Members; or if such Person or Persons reside in any foreign Town or City, and are not Members of some British Factory, the Name of such foreign Town or City where such Person or Persons usually reside, and also the Names of the House or Copartnership in Great Britain or Ireland, for or with whom such Person or Persons is or are Agent or Partner, or Agents or Partners; and the Person or Persons to whom the Property of such Ship or Vessel shall be so transferred, or his or their Agent, shall also deliver a Copy of such Indorsement to the Person or Persons authorized to make Registry, and grant Certificates of Registry, as aforesaid, who are hereby required to cause an Entry thereof to be indorsed on the Oath or Affidavit upon which the original certificate of Registry of such Ship or Vessel was obtained; and shall also make a Memorandum of the same in the Book of Registers which is hereby directed and required to be kept, and shall forthwith give Notice thereof to the Commissioners of his Majesty's Customs in England or Scotland, under whom they respectively act.

Section XVII

And be it further enacted by the Authority aforesaid, That when and so often as the Property in any Ship or Vessel, belonging to any of his Majesty's Subjects, shall be transferred to any other or others of his Majesty's Subjects, in Whole or in Part, the Certificate of the Registry of such Ship or Vessel shall be truly and accurately recited, in Words at Length, in the Bill or other Instrument of sale thereof, and that otherwise such Bill of Sale shall be utterly null and void, to all Intents and Purposes.

Section XXIV

And be it further enacted by the Authority aforesaid, That if any Ship or Vessel, after she shall have been registered pursuant to the Directions of this Act, shall in any Manner whatever be altered in Form or Burthen, by being lengthened or built upon, or shall be altered from a Sloop to a Brigantine, or from any one Denomination of a Vessel to another, by the Mode or Method of rigging or fitting, in such Case such Ship or Vessel shall be registered *de novo*, in Manner herein before required, as soon as she returns to the Port to which she belongs, or to any other Port in which she may be legally registered by virtue of this Act, on Failure whereof such Ship or Vessel shall to all Intents and Purposes be considered, and deemed and taken to be a foreign Ship or Vessel.

Section XXV

And be it further enacted by the Authority aforesaid, That the Owner or Owners of all such Ships and Vessels as shall be taken by any of his Majesty's Ships or Vessels of War, or by any private or other Ship or Vessel, and condemned as lawful Prize in any Court of Admiralty, shall, upon registering such Ship or Vessel, before he or they shall obtain such Certificate as aforesaid, produce to the proper Officer of his Majesty's Customs a Certificate of the Condemnation of such Ship or Vessel, under the Hand and Seal of the Judge of the Court in which such Ship or Vessel shall have been condemned (which Certificate such Judge is hereby authorized and required to grant), and also a true and exact Account, in Writing, of all the Particulars contained in the Certificate herein before set forth, to be made and subscribed by one or more skilful Persons to be appointed by the Court to survey such Ship or Vessel; and shall also make Oath before the said Officer (which is hereby authorized and required to administer) that such Ship or Vessel is the same Vessel which is mentioned in the Certificate of the Judge aforesaid.

Section XXXII

And be it further enacted by the Authority aforesaid, That no Ship or Vessel, which by this Act is directed to be hereafter registered, or which is directed, instead of the Register now required by Law, to take out a new Register, according to the Form, and in the Manner herein before described, shall be permitted, after her first Arrival at the Port to which she belongs, at the Expiration of the Notice herein before directed, to clear outwards to

foreign Parts or Coastwise, or to proceed to Sea in order to fish on the Coasts, or for any other Purpose whatever, as a British Ship or Vessel, or shall be in any wise intitled to the Privileges of a British Ship or Vessel, unless the Owner or Owners thereof shall have obtained a Certificate according to the Form, and in the Manner herein before described; and in case any such Ship or Vessel shall depart from such Port without being registered, and without having obtained a Certificate as aforesaid, every such Ship or Vessel shall be subject to Forfeiture, and also all the Guns, Furniture, Ammunition, Tackle, and Apparel, to such Ship or Vessel belonging.

34 Geo. III c.68 An Act for the further Encouragement of British Mariners; and for other purposes therein mentioned.

Section XIV

And whereas by an Act, passed in the twenty-sixth Year of his Majesty's Reign, intituled, *An Act for the further Increase and Encouragement of Shipping and Navigation*, it is, amongst other Things, enacted, that when and so often as the Property in any Ship or Vessel belonging to any of his Majesty's Subjects shall be transferred to any other or other of his Majesty's Subjects, in Whole or in Part, the Certificate of the Registry of such Ship or Vessel shall be truly and accurately recited in Words at Length, in the Bill or other Instrument of Sale thereof, and that otherwise such Bill of Sale shall be utterly null and void, to all Intents and Purposes: And whereas Doubts have arisen whether, by the said Provision, every Transfer of Property in any Ship or Vessel is required to be made by some Bill, or other Instrument in Writing, and whether Contracts or Agreements for the Transfer of such Property may not be made without any Instrument in Writing; be it enacted, That no Transfer, Contract or Agreement for Transfer, of Property in any Ship or Vessel, made, or intended to be made, after the first Day of January one thousand seven hundred and ninety-five, shall be valid or effectual for any Purpose whatsoever, either in Law or in Equity, unless such Transfer, or Contract or Agreement for Transfer, of Property in such Ship or Vessel, shall be made by Bill of Sale, or Instrument in Writing, containing such Recital as prescribed by the said recited Act.

Section XV

And whereas, by the Laws now in force, upon any Alteration of Property in any Ship or Vessel in the same Port to which such Ship or Vessel belongs, an Indorsement upon the Certificate of Registry is required to be made; be it enacted, That such Indorsement shall, from and after the first Day of January one thousand seven hundred and ninety-five, be made in the Manner and Form hereinafter expressed, and shall be signed by the Person or Persons transferring the Property of the said Ship or Vessel, by Sale, or Contract or Agreement for Sale thereof, or by some Person legally authorized for that Purpose by him, her, or them, and a Copy of such Indorsement shall be delivered to the Person or Persons authorized to make

Registry, and grant Certificates of Registry, otherwise such Sale, or Contract or Agreement for the Sale thereof, shall be utterly null and void, to all Intents and Purposes whatsoever; and such Person or Persons so authorized to make Registry, and grant Certificates of Registry, are hereby required to cause an Entry thereof to be indorsed on the Oath or Affidavit upon which the Original certificate of Registry of such Ship or Vessel was obtained, and shall also make a Memorandum of the same in the Book of Registry, and shall forthwith give Notice thereof to the Commissioners of his Majesty's Customs in England and Scotland, under whom they respectively act:

Form of Indorsement on Change of Property.

"Be it remembered, That [I or we] [Names, Residence, and Occupation of the Persons selling] have this Day sold and transferred all [my or our] Right, Share, or Interest in and to the Ship or Vessel [Name of the Ship or Vessel] mentioned in the within Certificate of Registry, unto [Names, Residence, and Occupation of the Purchasers]. Witness [my or our Hand or Hands] this [Date in Words at full length.]

Signed in the Presence of

[Two Witnesses]

Section XVI

Provided always, That if any Ship or Vessel shall be at Sea, or absent from the Port to which she belongs, at the Time when such Alteration in the Property thereof shall be made as aforesaid, so that an Indorsement or Certificate cannot be immediately made, the Sale, or Contract or Agreement for the Sale thereof, shall notwithstanding be made by a Bill of Sale or other Instrument in Writing as before directed, and a Copy of such Bill of Sale, or other Instrument in Writing, shall be delivered, and an Entry thereof shall be indorsed on the Oath or Affidavit, and a Memorandum thereof shall be made in the Book of Registers, and Notice of the same shall be given to the Commissioners of the Customs, in the Manner herein before directed; and, within ten Days after such Ship or Vessel shall return to the Port to which she belongs, an Indorsement shall be made and signed by the Owner or Owners, or some Person legally authorized for that Purpose by him, her, or them, and a Copy thereof shall be delivered in Manner hereinbefore mentioned, otherwise such Bill of Sale, or Contract or Agreement for Sale thereof, shall be utterly null and void, to all Intents and Purposes whatsoever, and Entry thereof shall be indorsed, and a Memorandum thereof made, in the Manner hereinbefore directed.

Section XVIII

And whereas by an Act, passed in the twenty - eighth Year of the Reign of his present Majesty, intituled, *An Act more effectually to secure the Performance of Quarantine, and for amending several Laws relating to the Revenue of Customs*, certain Provisions were, amongst other Things, made to prevent the Masters of Ships or Vessels from wilfully and maliciously detaining and refusing to deliver up the Certificates of Ships Registry, to the Prejudice of the Owners of such Ships or Vessels: And whereas the good Purposes intended by those Provisions have not been effected; and it is

therefore expedient to make further Provisions for preventing the Masters of Ships or Vessels from withholding Certificates of Registry, to the Prejudice of the Owners of such Ships or Vessels: Be it therefore enacted by the Authority aforesaid, That in case the Master of any Ship or Vessel, who shall have received the Certificate of the Registry thereof, (whether such Master shall be a Part Owner or not,) shall wilfully detain and refuse to deliver up the same to the proper Officers empowered to make Registry and grant a Certificate thereof, on the Owner or Owners, or the major Part of the Owners, of such Ship or Vessel, if such Master has not any Property therein, or on the other Owner or Owners, or the major Part of the other Owners, of such Ship or Vessel, if such Master hath any Share or Property therein, requiring him so to do, it may and shall be lawful to and for the Owner or Owners, or the major Part of the Owners, of such Ship or Vessel, the Certificate of Registry of which shall be detained and refused to be delivered up as aforesaid, to make Complaint on Oath against the Master of the Ship or Vessel who shall so detain and refuse to deliver up the same, of such Detainer and Refusal, to any Justice of the Peace residing near to the Place where such Detainer and Refusal shall be in Great Britain, or to any Member of the Supreme Court of Justice, or any Justice of the Peace in the Islands of Jersey, Guernsey, or Man, or in any Colony, Plantation, Island, or Territory to his Majesty belonging in America or the West Indies, where such Detainer and Refusal shall be in any of the Places last - mentioned, and on such Complaint the said Justice or other Magistrate shall, and is hereby required, by Warrant under his Hand and Seal, to cause such Master to be brought before him, to be examined touching such Detainer and Refusal; and if it shall appear to the said Justice or other Magistrate, on Examination of the Master, or otherwise, that the said Certificate of Registry is not lost or mislaid, but is wilfully detained by the said Master, such Master shall be thereof convicted, and shall forfeit and pay the Sum of one hundred Pounds, and on Failure of Payment thereof, he shall be committed to the Common Gaol, there to remain, without Bail or Mainprize, for such Time as the said Justice or other Magistrate shall in his Discretion deem proper, not being less than six Months, nor more than twelve Months.

4 Geo. 4 c.41 An Act for the Registering of Vessels.

Section I (extract)

... and also the whole of an Act, 26 Geo. 3. c.60, intituled "An Act for the further increase and encouragement of shipping and navigation;" ... and also so much of an Act 34 Geo. 3. c.68, intituled "An Act for the further encouragement of British mariners, and for other purposes therein mentioned," as relates to the transfer or contract, or agreement for transfer, and the alteration of property in any ship or vessel, and as relates to the certificate of registry being withheld or detained by the master of the ship or vessel, and as relates to the registering a ship or vessel de novo, under the several circumstances therein mentioned; ... shall be and the same are hereby respectively repealed.

Section XI

That no person who has taken the oath of allegiance to any foreign state, except under the terms of some capitulation, unless he shall afterwards become a denizen or naturalized subject of the United Kingdom by His Majesty's letters patent, or by Act of Parliament, nor any person usually residing in any country not under the dominion of His Majesty, his heirs and successors, unless he be a member of some British factory, or agent for or partner in any house or copartnership actually carrying on trade in Great Britain or Ireland, shall be entitled to be the owner in whole or in part, directly or indirectly, of any ship or vessel required and authorized to be registered by this Act.

Section XXV

That in case the master of any ship or vessel, or any other person who shall have received or obtained by any means or for any purpose whatever, the certificate of the registry thereof, (whether such master or other person shall be a part owner or not) shall wilfully detain and refuse to deliver up the same to the proper officers of His Majesty's Customs for the purposes of such ship or vessel as occasion shall require, any owner or owners of such ship or vessel, the certificate of registry of which shall be detained and refused to be delivered up as aforesaid, may make complaint on oath against the master of the ship or vessel, or other person who shall so detain and refuse to deliver up the same, of such detainer and refusal to any justice of the peace residing near to the place where such detainer and refusal shall be in Great Britain or Ireland, or to any member of the supreme court of justice, or any justice of the peace in Jersey, Guernsey, or Man, or in any colony, plantation, island, or territory to His Majesty belonging, in Asia, Africa or America, or Malta, Gibraltar, or Heligoland, where such detainer and refusal shall be in any of the places last-mentioned; and on such complaint, the said justice or other magistrate shall, by warrant under his hand and seal, cause such master or other person to be brought before him, to be examined touching such detainer and refusal; and if it shall appear to the said justice or other magistrate, on examination of the master or other person, or otherwise, that the said certificate of registry is not lost or mislaid, but is wilfully detained by the said master or other person, such master or other person shall be thereof convicted, and shall forfeit and pay one hundred pounds, and on failure of payment thereof, shall be committed to the common gaol, there to remain without bail or mainprize, for such time as the said justice or other magistrate shall in his discretion deem proper, not less than three, nor more than twelve months; and the said justice or other magistrate shall certify the aforesaid detainer, refusal and conviction to the person or persons who granted such certificate of registry for such ship or vessel, who shall, on the terms and conditions of law being complied with, make registry of such ship or vessel de novo, and grant a certificate thereof, conformably to law, notifying on the back of such certificate the ground upon which the ship or vessel was so registered de novo; and if such master or other person who shall have detained and refused to deliver up such certificate of registry as aforesaid, or shall be verily believed to have detained the same, shall have absconded, so that the said warrant of the justice or other magistrate cannot be executed upon him, and proof thereof shall be made to the satisfaction of the commissioners of Customs, the said

commissioners may permit such ship or vessel to be registered de novo, or otherwise in their discretion to grant a license for the present use of such ship or vessel, in like manner as is herein-before provided, in the case wherein the certificate of registry is lost or mislaid.

Section XXIX

That when and so often as the property in any ship or vessel, or any part thereof, belonging to any of His Majesty's subjects, shall after registry thereof, be sold to any other or others of His Majesty's subjects, the same shall be transferred by bill of sale, or other instrument in writing, containing a recital of the certificate of registry of such ship or vessel, or the principal contents thereof, otherwise such transfer shall not be valid or effectual for any purpose whatever, either in law or in equity: Provided always, that no bill of sale shall be deemed void by reason of any error in such recital, or by the recital of any former certificate of registry instead of the existing certificate, provided the identity of the ship or vessel therein intended be effectually proved thereby.

Section XXXV

That no bill of sale or other instrument in writing shall be valid to pass the property in any ship or vessel or in any share thereof, or for any other purpose, until such bill of sale or other instrument in writing shall have been produced to the collector and comptroller of the port to which such ship or vessel belongs, and until the collector and comptroller shall have entered in the book of registry of such ship or vessel, and which they are hereby required to do upon the production of the bill of sale or other instrument for that purpose, the name, residence, and description of the vendor or mortgagor, or of each vendor or mortgagor, if more than one, the number of shares transferred, the name, residence, and description of the purchaser or mortgagee, or of each purchaser or mortgagee, if more than one, and the date of the bill of sale, or other instrument, and of the production of it; and further, the said collector and comptroller shall indorse the aforesaid particulars of such bill of sale or other instrument on the certificate of registry of the said ship or vessel, when the same shall be produced to them for that purpose, in manner and to the effect following; videlicet,

"Custom house [port and date; name, residence, and description of vendor and mortgagor] has transferred by [bill of sale or other instrument] dated [date; number of shares] to [name, residence, and description of purchaser or mortgagee]."

"A. B. collector."

"C. D. Comptroller."

And forthwith to give notice thereof to the commissioners of Customs: And in case the collector and comptroller shall be desired so to do, and the bill of sale or other instrument shall be produced to them for that purpose, then the said collector and comptroller are hereby required to certify, by endorsement upon the said bill of sale or other instrument, that the particulars before-mentioned have been so entered in the book of registry, and indorsed upon the certificate of registry as aforesaid.

Section XXXVI

That when and so soon as the particulars of any bill of sale or other instrument, by which any ship or vessel, or any share or shares thereof, shall be transferred, shall have been so entered in the book of registry as aforesaid, the said bill of sale or other instrument shall be valid to pass the property thereby intended to be transferred, except as against such subsequent purchasers and mortgagees who shall first procure the Indorsement to be made upon the certificate of registry of such ship or vessel in manner herein-after mentioned.

Section XXXVII (Extract)

... [i]t being the true intent and meaning of this act that the several purchasers and mortgagees of such ship or vessel, share or shares thereof, when more than one appear to claim the same property, shall have priority one over the other, not according to the respective times when the particulars of the bill of sale or other instrument by which such property was transferred to them were entered in the book of registry as aforesaid, but according to the time when the Indorsement is made upon the certificate of registry as aforesaid: ...

6 Geo. 4 c.105 An Act to repeal the several Laws relating to the Customs. (extract)

... It is enacted,

That from the 5th of July 1826, so much and such parts of the several Statutes herein-after mentioned, ... shall be repealed, viz. -

- So much of 12 C. 2. c.18 as remains unrepealed. ... Also the whole of 34 Geo. 3. c.68. ... Also the whole of 4 Geo. 4. C.41. ...

6 Geo. 4 c.110 AN ACT for the registering of British Vessels

Section XXVII

That in case the master of any ship or vessel, or any other person who shall have received or obtained by any means or for any purpose whatever, the certificate of the registry thereof, (whether such master or other person shall be a part owner or not) shall wilfully detain and refuse to deliver up the same to the proper officers of Customs, for the purposes of such ship or vessel, as occasion shall require, any Owner or Owners of such ship or vessel, the certificate of registry of which shall be detained and refused to be delivered up as aforesaid, may make complaint on oath against the Master or other person who shall so detain and refuse to deliver up the same, of

such detainer and refusal, to any Justice of the Peace residing near to the place where such detainer and refusal shall be, in Great Britain or Ireland, or to any member of the Supreme Court of Justice, or any Justice of the Peace in Jersey, Guernsey, or Man, or in any colony, plantation, island, or territory to His Majesty belonging, in Asia, Africa or America, or Malta, Gibraltar, or Heligoland, where such detainer and refusal shall be in any of the places last-mentioned; and on such complaint, the said Justice or other Magistrate shall, by warrant under his hand and seal, cause such Master or other person to be brought before him, to be examined touching such detainer and refusal; and if it shall appear to the said Justice or other Magistrate, on examination of the master or other person, or otherwise, that the said certificate of registry is not lost or mislaid, but is wilfully detained by the said Master or other person, such Master or other person shall be thereof convicted, and shall forfeit and pay 100l., and on failure of payment thereof, shall be committed to the common gaol, there to remain without bail or mainprize, for such time as the said Justice or other Magistrate shall in his discretion deem proper, not being less than three, nor more than twelve months; and the said Justice or other Magistrate shall certify the aforesaid detainer, refusal and conviction to the person or persons who granted such certificate of registry for such ship or vessel, who shall, on the terms and conditions of law being complied with, make registry of such ship or vessel de novo, and grant a certificate thereof, conformably to law, notifying on the back of such certificate the ground upon which the ship or vessel was so registered de novo; and if such master or other person who shall have detained and refused to deliver up such certificate of registry, or shall be verily believed to have detained the same, shall have absconded, so that the said warrant of the Justice or other Magistrate cannot be executed, and proof thereof shall be made to the satisfaction of the Commissioners of Customs, the said Commissioners may permit such ship or vessel to be registered de novo, or otherwise, in their discretion grant a license for the present use of such ship or vessel, in like manner as herein-before provided, in the case wherein the certificate of registry is lost or mislaid.

Section XXXI

That so often as the property in any ship or vessel, or any part thereof, belonging to any of His Majesty's subjects, shall after registry thereof, be sold to any other or others of His Majesty's subjects, the same shall be transferred by bill of sale, or other instrument in writing, containing a recital of the certificate of registry, or the principal contents thereof, otherwise such transfer shall not be valid or effectual for any purpose whatever, either in law or in equity: Provided that no bill of sale shall be deemed void by reason of any error in such recital, or by the recital of any former certificate of registry instead of the existing certificate, provided the identity of the ship or vessel therein intended be effectually proved thereby.

Section XXXVII

That no bill of sale or other instrument in writing, shall be valid and effectual to pass the property in any ship or vessel, or in any share thereof, or for any other purpose, until such bill of sale or other instrument in writing shall have been produced to the Collector and Controller of the port at which

such vessel is registered, or to the Collector and Controller of any other port at which she is about to be registered *de novo*, as the case may be, nor until such Collector and Controller respectively shall have entered in the book of registry or in the book of intended registry of such vessel, as the case may be (and which they are to do upon the production of the bill of sale or other instrument for that purpose) the name, residence, and description of the vendor or mortgagor, or of each vendor or mortgagor, if more than one, the number of shares transferred, the name, residence, and description of the purchaser or mortgagee, or of each purchaser or mortgagee, if more than one, and the date of the bill of sale, or other instrument, and of the production of it; and further, if such vessel is not about to be registered *de novo* the Collector and Controller of the port where such ship is registered shall indorse the aforesaid particulars of such bill of sale or other instrument on the certificate of registry of the said ship or vessel, when the same shall be produced to them for that purpose, in manner and to the effect following; videlicet,

"CUSTOM HOUSE [*Port and Date; name, residence, and description of Vendor and Mortgagor*] has transferred by [*Bill of Sale or other Instrument*] dated [*Date; Number of Shares*] to [*name, residence, and description of Purchaser or Mortgagee*].

"A. B. Collector."

"C. D. Controller."

And forthwith shall give notice thereof to the Commissioners of Customs: and in case the Collector and Controller shall be desired so to do, and the bill of sale or other instrument shall be produced to them for that purpose, then the said Collector and Controller are to certify, by Indorsement upon the said bill of sale or other instrument, that the particulars before mentioned have been so entered in the book of registry, and indorsed upon the certificate of registry as aforesaid.

Section XXXVIII

That so soon as the particulars of any bill of sale or other instrument by which any ship or vessel, or any share or shares thereof, shall be transferred, shall have been so entered in the book of registry as aforesaid, the said bill of sale or other instrument shall be effectual to pass the property thereby intended to be transferred, as against all and every person or persons whatsoever, except as against such subsequent purchasers and mortgagees who shall first procure the Indorsement to be made upon the certificate of registry of such ship or vessel in manner herein-after mentioned.

Section XXXIX (Extract)

... [i]t being the true intent of this Act that the several purchasers and mortgagees of such ship or vessel, share or shares thereof, when more than one appear to claim the same property, shall have priority one over the other, not according to the respective times when the particulars of the bill of sale or other instrument by which such property was transferred to them

were entered in the book of registry, but according to the time when the Indorsement is made upon the certificate of registry: ...

3 & 4 Will. 4. c.55 AN ACT for the registering of British Vessels.

Section XXVII.

And after noticing that it is not proper that any person under any pretense whatever should detain the certificate of registry of any ship or vessel, or hold the same for any purpose other than the lawful use and navigation of the ship or vessel for which it was granted; - It is therefore enacted, - That in case any person who shall have received or obtained by any means or for any purpose whatever, the certificate of the registry of any ship or vessel, (whether such person shall claim to be the master, or to be the owner or one of the owners of such ship or vessel, or not) shall wilfully detain and refuse to deliver up the same to the proper officers of His Majesty's Customs, for the purposes of such ship or vessel, as occasion shall require, or to the person or persons having the actual command, possession, and management of such ship or vessel as the ostensible and reputed master or as the ostensible and reputed owner or owners thereof, it may and shall be lawful to and for any such last-mentioned person to make complaint on oath of such detainer and refusal, to any Justice of the Peace residing near to the place where such detainer and refusal shall be, in Great Britain or Ireland, or to any member of the Supreme Court of Justice, or any Justice of the Peace in the Islands of Jersey, Guemsey, or Man, or in any colony, plantation, island, or territory to His Majesty belonging, in Asia, Africa or America, or in Malta, Gibraltar, or Heligoland, where such detainer and refusal shall be in any of the places last-mentioned; and on such complaint, the said Justice or other Magistrate shall and is hereby required, by warrant under his hand and seal, to cause the person so complained against to be brought before him, to be examined touching such detainer and refusal; and if it shall appear to the said Justice or other Magistrate, on examination of such person, or otherwise, that the said certificate of registry is not lost or mislaid, but is wilfully detained by the said person, such person shall be thereof convicted, and shall forfeit and pay the sum of 100l., and on failure of payment thereof, he shall be committed to the common gaol, there to remain without bail or mainprize, for such time as the said Justice or other Magistrate shall in his discretion deem proper, not being less than three months nor more than twelve months; and the said Justice or other Magistrate shall and he is hereby required to certify the aforesaid detainer, refusal and conviction to the person or persons who granted such certificate of registry for such ship or vessel, who shall, on the terms and conditions of law being complied with, make registry of such ship or vessel de novo, and grant a certificate thereof conformably to law, notifying on the back of such certificate the ground upon which the ship or vessel was so registered de novo; and if the person who shall have detained and refused to deliver up such certificate of registry as aforesaid, or shall be verily believed to have detained the same, shall have absconded, so that the said warrant of the Justice or other Magistrate cannot be executed upon him, and proof thereof

shall be made to the satisfaction of the Commissioners of His Majesty's Customs, it shall be lawful for the said Commissioners to permit such ship or vessel to be registered de novo, or otherwise, in their discretion, to grant a license for the present use of such ship or vessel, in like manner as is herein-before provided, in the case wherein the certificate of registry is lost or mislaid.

Section XXXI

That when and so often as the property in any ship or vessel, or any part thereof, belonging to any of His Majesty's subjects, shall, after registry thereof, be sold to any other or others of His Majesty's subjects, the same shall be transferred by bill of sale, or other instrument in writing, containing a recital of the certificate of registry of such ship or vessel, or the principal contents thereof, otherwise such transfer shall not be valid or effectual for any purpose whatever either in law or in equity: Provided always, that no bill of sale shall be deemed void by reason of any error in such recital, or by the recital of any former certificate of registry instead of the existing certificate, provided the identity of the ship or vessel intended in the recital be effectually proved thereby.

Section XXXIV

That no bill of sale or other instrument in writing shall be valid and effectual to pass the property in any ship or vessel, or in any share thereof, or for any other purpose, until such bill of sale or other instrument in writing shall have been produced to the collector and controller of the port at which such ship or vessel is already registered, or to the collector and controller of any other port at which she is about to be registered de novo, as the case may be, nor until such collector and controller respectively shall have entered in the book of such last registry in the one case, or in the book of such registry de novo, after all the requisites of law for such registry de novo shall have been duly complied with, in the other case (and which they are respectively hereby required to do upon the production of the bill of sale or other instrument for that purpose) the name, residence, and description of the vendor or mortgagor, or of each vendor or mortgagor, if more than one, the number of shares transferred, the name, residence, and description of the purchaser or mortgagee, or of each purchaser or mortgagee, if more than one, and the date of the bill of sale or other instrument, and of the production of it; and further, if such ship or vessel is not about to be registered de novo, the collector and controller of the port where such ship is registered shall and they are hereby required to indorse the aforesaid particulars of such bill of sale or other instrument on the certificate of registry of the said ship or vessel, when the same shall be produced to them for that purpose, in manner and to the effect following; (videlicet,)

'Custom House [Port and Date.] [Name, Residence, and Description of Vendor or Mortgagor] has transferred by [Bill of Sale or other Instrument], dated [Date; Number of Shares] to [Name, Residence, and Description of Purchaser or Mortgagee].

A. B. Collector.

C. D. Controller.

And forthwith to give notice thereof to the Commissioners of Customs; and in case the collector and controller shall be desired so to do, and the bill of sale or other instrument shall be produced to them for that purpose, then the said collector and controller are hereby required to certify, by Indorsement upon the bill of sale or other instrument, that the particulars before mentioned have been so entered in the book of registry, and indorsed upon the certificate of registry as aforesaid.

Section XXXV

That when and so soon as the particulars of any bill of sale or other instrument by which any ship or vessel, or any share or shares thereof, shall be transferred, shall have been so entered in the book of registry as aforesaid, the said bill of sale or other instrument shall be valid and effectual to pass the property thereby intended to be transferred as against all and every person and persons whatsoever, and to all intents and purposes, except as against such subsequent purchasers and mortgagees who shall first procure the Indorsement to be made upon the certificate of registry of such ship or vessel in manner hereinafter mentioned.

Section XXXVI (Extract)

... [i]t being the true intent and meaning of this Act that the several purchasers and mortgagees of such ship or vessel, share or shares thereof, when more than one appear to claim the same property, or to claim security on the same property, in the same rank and degree, shall have priority one over the other, not according to the respective times when the particulars of the bill of sale or other instrument by which such property was transferred to them were entered in the book of registry as aforesaid, but according to the time when the Indorsement is made upon the certificate of registry as aforesaid: ...

8&9 Vict. c.89 An Act for the registering of British Vessels.

Section XXX

That in case any person who shall have received or obtained by any means or for any purpose whatever, the certificate of the registry of any ship or vessel, (whether such person shall claim to be the master or to be the owner or one of the owners of such ship or vessel, or not,) shall wilfully detain and refuse to deliver up the same to the proper officers of Her Majesty's Customs, for the purposes of such ship or vessel, as occasion shall require, or to the person or persons having the actual command, possession, and management of such ship or vessel as the ostensible and reputed master, or as the ostensible and reputed owner or owners thereof, it shall be lawful to and for any such last-mentioned person to make complaints on oath, of such detainer and refusal to any Justice of the Peace

residing near to the place where such detainer and refusal shall be in Great Britain or Ireland, or to any member of the Supreme Court of Justice, or to any deemster or Justice of the Peace in the Islands of Jersey, Guernsey, or Man, or in any colony, plantation, island, or territory to Her Majesty belonging in Asia, Africa or America, or in Malta, Gibraltar, or Heligoland, where such detainer and refusal shall be in any of the places last-mentioned; and on such complaint the said Justice or other Magistrate shall and is hereby required, by warrant under his hand and seal, to cause the person so complained against to be brought before him, to be examined touching such detainer and refusal; and if it shall appear to the said Justice or other Magistrate, on examination of such person or otherwise, that the said certificate of registry is not lost or mislaid, but is wilfully detained by the said person, such person shall be thereof convicted, and shall forfeit and pay the sum of 100l., and on failure of payment thereof, he shall be committed to the common gaol, there to remain without bail or mainprize, for such time as the said Justice or other Magistrate shall in his discretion deem proper, not being less than three months nor more than twelve months; and the said Justice or other Magistrate shall certify the aforesaid detainer, refusal and conviction to the person or persons who granted such certificate of registry for such ship or vessel, who shall, on the terms and conditions of law being complied with, make registry of such ship or vessel *de novo*, and grant a certificate thereof conformably to law, notifying on the back of such certificate the ground upon which such ship or vessel was so registered *de novo*; and if the person who shall have detained and refused to deliver up such certificate of registry as aforesaid, or shall be verily believed to have detained the same, shall have absconded, so that the said warrant of the Justice or other Magistrate cannot be executed upon him, and proof thereof shall be made to the satisfaction of the Commissioners of Her Majesty's Customs, it shall be lawful for the said Commissioners to permit such ship or vessel to be registered *de novo*, or otherwise, in their discretion, to grant a license for the present use of such ship or vessel, in like manner as is hereinbefore provided, in the case wherein the certificate of registry is lost or mislaid.

Section XXXIV

That when and so often as the property in any ship or vessel, or any part thereof, belonging to any of Her Majesty's subjects, shall, after registry thereof, be sold to any other or others of Her Majesty's subjects, the same shall be transferred by bill of sale, or other instrument in writing, containing a recital of the certificate of registry of such ship or vessel, or the principal contents thereof, otherwise such transfer shall not be valid or effectual for any purpose whatever either in law or in equity: Provided always, that no bill of sale shall be deemed void by reason of any error in such recital, or by the recital of any former certificate of registry instead of the existing certificate, provided the identity of the ship or vessel intended in the recital be effectually proved thereby.

Section XXXVII

That no bill of sale or other instrument in writing shall be valid and effectual to pass the property in any ship or vessel, or in any share thereof, or for any other purpose, until such bill of sale or other instrument in writing

shall have been produced to the collector and comptroller of the port at which such ship or vessel is already registered, or to the collector and comptroller of any other port at which she is about to be registered de novo, as the case may be, nor until such collector and comptroller respectively shall have entered in the book of such last registry in the one case, or in the book of such registry de novo, after all the requisites of law for such registry de novo shall have been duly complied with, in the other case (and which they are respectively hereby required to do upon the production of the bill of sale or other instrument for that purpose) the name, residence, and description of the vendor or mortgagor, or of each vendor or mortgagor if more than one, the number of shares transferred, the name, residence, and description of the purchaser or mortgagee, or of each purchaser or mortgagee if more than one, and the date of the bill of sale or other instrument and of the production of it; and further, if such ship or vessel is not about to be registered de novo, the collector and comptroller of the port where such ship is registered shall and they are hereby required to indorse the aforesaid particulars of such bill of sale or other instrument on the certificate of registry of the said ship or vessel, when the same shall be produced to them for that purpose, in manner and to the effect following; (videlicet,)

'Custom House [*Port and Date.*]

' [*Name, Residence, and Description of Vendor or Mortgagor*] has transferred by [*Bill of Sale or Other Instrument*], dated [*Date; Number of Shares*] to [*Name, Residence, and Description of Purchaser or Mortgagee*].

A. B. Collector.

C. D. Comptroller.

And forthwith to give notice thereof to the Commissioners of Customs; and in case the collector and comptroller shall be desired so to do, and the bill of sale or other instrument shall be produced to them for that purpose, then the said collector and comptroller are hereby required to certify by Indorsement upon the bill of sale or other instrument that the particulars before mentioned have been so entered in the book of registry, and indorsed upon the certificate of registry as aforesaid.

Section XXXVIII

That when and so soon as the particulars of any bill of sale or other instrument by which any ship or vessel, or any share or shares thereof, shall be transferred, shall have been so entered in the book of registry as aforesaid, the said bill of sale or other instrument shall be valid and effectual to pass the property thereby intended to be transferred as against all and every person and persons whatsoever, and to all intents and purposes, except as against such subsequent purchasers and mortgagees who shall first procure the Indorsement to be made upon the certificate of registry of such ship or vessel in manner hereinafter mentioned.

MSA 1854 (17&18 Victoria c.104)

Section 18

"No Ship shall be deemed to be a British Ship unless she belongs wholly to Owners of the following Description; that is to say,

(1) Natural-born British Subjects:

Provided that no natural-born Subject who has taken the Oath of Allegiance to any Foreign Sovereign of State shall be entitled to be such Owner as aforesaid, unless he has subsequently to taking such last-mentioned Oath taken the Oath of Allegiance to Her Majesty, and is and continues to be during the whole Period of his so being an Owner resident in some Place within Her Majesty's dominions, or if not so resident, Member of a British Factory, or Partner in a House actually carrying on Business in the United Kingdom or in some other Place within Her Majesty's Dominions:

(2) Persons made Denizens by Letters of Denization, or naturalized by or pursuant to any Act of the Imperial Legislature, or by or pursuant to any Act or Ordinance of the proper legislative Authority in any British Possession:

Provided the such Persons are and continue to be during the whole Period of their so being Owners resident in some Place within Her Majesty's Dominions, or if not so resident, Members of a British Factory, or Partners in a House actually carrying on Business in the United Kingdom or in some other Place within Her Majesty's Dominions, and have taken the Oath of Allegiance to Her Majesty subsequently to the Period of their being so made Denizens or naturalized:

(3) Bodies Corporate established under, subject to the Laws of, and having their principal Place of Business in the United Kingdom or some British possession.

Section 19

Every British Ship must be registered in manner herein-after mentioned, except,

(1) Ships duly registered before this Act comes into operation:

(2) Ships not exceeding Fifteen Tons Burden employed solely in Navigation on the Rivers or Coasts of the United Kingdom, or on the Rivers or Coasts of some British Possession within which the Managing Owners of such Ships are resident:

(3) Ships not exceeding Thirty Tons Burden, and not having a whole or fixed Deck, and employed solely in fishing or trading coastwise on the Shores of Newfoundland or Parts adjacent thereto, or in the Gulf of St. Lawrence, or on such Portion of the Coasts of Canada, Nova Scotia, or New Brunswick as lie bordering on such Gulf:

And no Ship hereby required to be registered shall, unless registered, be recognized as a British Ship; and no Officer of Customs shall grant a

Clearance or Transire to any Ship hereby required to be registered for the Purpose of enabling her to proceed to Sea as a British Ship, unless the Master of such Ship, upon being required so to do, produces to him such Certificate of Registry as is herein-after mentioned; and if such Ship attempts to proceed to Sea as a British Ship without a Clearance or Transire, such Officer may detain such Ship until such Certificate is produced to him.

Section 43

No Notice of any Trust, express, implied, or constructive, shall be entered in the Register Book, or receivable by the Registrar; and, subject to any Rights and Powers appearing by the Register Book to be vested in any other Party, the registered Owner of any Ship or Share therein shall have Power absolutely to dispose in manner herein-after mentioned of such Ship or Share, and to give effectual Receipts for any Money paid or advanced by way of Consideration.

Section 45

Whenever any Change takes place in the registered Ownership of any Ship, then, if such Change occurs at a Time when the Ship is at her Port of Registry, the Master shall forthwith deliver the Certificate of Registry to the Registrar, and he shall indorse thereon a Memorandum of such Change; but if such Change occurs during the Absence of the Ship from her Port of Registry, then upon her first Return to such Port the Master shall deliver the Certificate of Registry to the Registrar, and he shall indorse thereon a like Memorandum of the Change; or if she previously arrives at any Port where there is a British Registrar, such Registrar shall, upon being advised by the Registrar of her Port of Registry of the Change having taken place, indorse a like Memorandum thereof on the Certificate of Registry, and may for that Purpose require the Certificate to be delivered to him, so that the Ship be not thereby detained; and any Master who fails to deliver to the Registrar the Certificate of Registry as herein-before required shall incur a Penalty not exceeding One hundred Pounds.

Section 46

Whenever the Master of any British registered Ship is changed, the following Persons, that is to say, if such Change is made in consequence of the Sentence of any Naval Court, the presiding Officer of such Court, but if the Change takes place from any other Cause, the Registrar, or if there is no Registrar the British Consular Officer resident at the Port where such Change takes place, shall indorse on the Certificate of Registry a Memorandum of such Change, and subscribe his Name to such Indorsement, and forthwith report the Change of Master to the Commissioners of Customs in London; and the Officers of Customs at any Port situate within Her Majesty's Dominions may refuse to admit any Person to do any Act at such Port as Master of any British Ship, unless his Name is inserted in or indorsed upon the Certificate of Registry of such Ship as the last appointed Master thereof.

Section 50

The Certificate of Registry shall be used only for the lawful Navigation of the Ship, and shall not be subject to Detention by reason of any Title, Lien, Charge, or Interest whatsoever which any Owner, Mortgagee, or other Person may have or claim to have on or in the Ship described in such Certificate; and if any Person whatever, whether interested or not in the Ship, refuses on Request to deliver up such Certificate when in his Possession or under his Control to the Person for the Time being entitled to the Custody thereof for the Purposes of such lawful Navigation as aforesaid, or to any Registrar, Officer of the Customs, or other Person legally entitled to require such Delivery, it shall be lawful for any Justice, by Warrant under his Hand and Seal, or for any Court capable of taking cognizance of such Matter, to cause the Person so refusing to appear before him and to be examined touching such Refusal; and unless it is proved to the Satisfaction of such Justice or Court that there was reasonable Cause for such Refusal the Offender shall incur a Penalty not exceeding One hundred Pounds; but if it is made to appear to such Justice or Court that the Certificate is lost, the Party complained of shall be discharged, and such Justice or Court shall thereupon certify that the Certificate of Registry is lost.

Section 55

A registered Ship or any Share therein, when disposed of to Persons qualified to be Owners of British Ships, shall be transferred by Bill of Sale; and such Bill of Sale shall contain such Description of the Ship as is contained in the Certificate of the Surveyor, or such other Description as may be sufficient to identify the Ship to the Satisfaction of the Registrar, and shall be according to the Form marked E. in the Schedule hereto, or as near thereto as Circumstances permit, and shall be executed by the Transferrer in the Presence of and be attested by One or more Witnesses.

Section 56

No Individual shall be entitled to be registered as Transferee of a Ship or any Share therein until he has made a Declaration in the Form marked F. in the Schedule hereto, stating his Qualification to be registered as Owner of a Share in a British Ship, and containing a Denial similar to the Denial herein-before required to be contained in a Declaration of Ownership by an original Owner; and no Body Corporate shall be entitled to be registered as Transferee of a Ship or any Share therein until the Secretary or other duly appointed public Officer of such Body Corporate has made a Declaration in the Form marked G. in the Schedule hereto, stating the Name of such Body Corporate, and such Circumstances of its Constitution and Business as may prove it to be qualified to own a British Ship, and containing a Denial similar to the Denial herein-before required to be contained in a Declaration of Ownership made on behalf of a Body Corporate: In the Case of an Individual, the above Declaration shall be made, if he reside within Five Miles of the Custom House of the Port of Registry, in the Presence of the Registrar, but if beyond that Distance in the Presence of any Registrar or of any Justice of the Peace; in the Case of a Body Corporate the Declaration shall be made in the Presence of the Registrar of the Port of Registry.

Section 57

Every Bill of Sale for the Transfer of any registered Ship, or of any Share therein, when duly executed, shall be produced to the Registrar of the Port at which the Ship is registered, together with the Declaration herein-before required to be made by a Transferee; and the Registrar shall thereupon enter in the Register Book the Name of the Transferee as Owner of the Ship or Share comprised in such Bill of Sale, and shall indorse on the Bill of Sale the Fact of such Entry having been made, with the Date and Hour thereof; and all Bills of Sale of any Ship or Shares in a Ship shall be entered in the Register Book in the Order of their Production to the Registrar.

Section 76

Any registered Owner, if desirous of disposing by way of Mortgage or Sale of the Ship or Share in respect of which he is registered at any Place out of the Country or Possession in which the Port of Registry of such Ship is situate, may apply to the Registrar, who shall thereupon enable him to do so by granting such Certificates as are herein-after mentioned, to be called respectively Certificates of Mortgage or Certificates of Sale, according as they purport to give a Power to mortgage or a Power to sell.

Section 104

No such Officer as aforesaid shall be responsible, either civilly or criminally, to any Person whomsoever, in respect of the Seizure or Detention of any Ship that has been seized or detained by him in pursuance of the Provisions herein contained, notwithstanding that such Ship is not brought in for Adjudication, or, if so brought in, is declared not to be liable to Forfeiture, if it is shown to the Satisfaction of the Judge or Court before whom any Trial relating to such Ship or such Seizure or Detention is held that there was no reasonable Grounds for such Seizure or Detention; but if no such Grounds are shown, such Judge or Court may award Payment of Costs and Damages to any Party aggrieved, and make such other Order in the Premises as it thinks just.

Section 107

"Every Register of or Declaration made in Pursuance of the Second Part of this Act in respect of any British Ship may be proved in any Court of Justice, or before any Person having by Law or by Consent of Parties Authority to receive Evidence, either by the Production of the Original or by an examined Copy thereof, or by a Copy thereof purporting to be certified under the Hand of the Registrar or other Person having the Charge of the Original, which certified Copies he is hereby required to furnish to any Person applying at a reasonable Time for the same, upon Payment of One Shilling for each such certified Copy; and every such Register or Copy of a Register, and also every Certificate of Registry of any British Ship, purporting to be signed by the Registrar or other proper Officer, shall be received in

Evidence in any Court of Justice, or before any Person having by Law or by Consent of Parties Authority to receive Evidence, as *prima facie* Proof of all the Matters contained or recited in such Register when the Register or such Copy is produced, and of all the Matters contained in or indorsed on such Certificate of Registry, and purporting to be authenticated by the Signature of a Registrar, when such Certificate is produced."

25&26 Vict. C.63 (MSA 1862) MSA Amendment Act

Section 3

It is hereby declared that the Expression 'Beneficial Interest', whenever used in the Second Part of the Principal Act (i.e. the MSA 1854), includes Interests arising under contract and other equitable Interests; and the Intention of the said Act is that without prejudice to the provisions contained in the said Act for preventing Notice of Trusts from being entered in the Registry Book or received by the registrar, and without prejudice to the Powers of Disposition and of giving Receipts conferred by the said Act on registered Owners and Mortgagees, and without prejudice to the Provisions contained in the said Act relating to the exclusion of unqualified Persons from the ownership of British Ships, Equities may be enforced Against Owners and Mortgagees of Ships in respect of their Interest therein, in the same manner as equities may be enforced against them in respect of any other Personal Property.

57&58 Vict. c.60 Merchant Shipping Act 1894.

Section 695

(1) Where a document is by this Act declared to be admissible in evidence, such document shall, on its production from the proper custody, be admissible in evidence in any court or before any person having by law or consent of parties authority to receive evidence, and, subject to all just exceptions, shall be evidence of the matters stated therein in pursuance of this Act or by any officer in pursuance of his duties as such officer.

(2) A copy of any such document or extract therefrom shall also be so admissible in evidence if proved to be an examined copy or extract, or if it purports to be signed and certified as a true copy or extract by the officer to whose custody the original document was entrusted, and that officer shall furnish such certified copy or extract to any person applying at a reasonable time for the same, upon payment of a reasonable sum for the same, not exceeding fourpence for every folio of ninety words, but a person shall be entitled to have -

(a) a certified copy of the particulars entered by the registrar in the register book on the registry of the ship, together with a certified statement showing the ownership of the ship at the time being; and

(b) a certified copy of any declaration, or document, a copy of which is made evidence by this Act,

on payment of one shilling for each copy.

(3) If any such officer wilfully certifies any document as being a true copy or extract knowing the same not to be a true copy or extract, he shall for each offence be guilty of a misdemeanor, and be liable on conviction to imprisonment for any term not exceeding eighteen months

(4) If any person forges the seal, stamp, or signature of any document to which this section applies, or tenders in evidence any such document with a false or counterfeit seal, stamp, or signature thereto, knowing the same to be false or counterfeit, he shall for each offence be guilty of felony, and be liable to penal servitude for a term not exceeding seven years, or to imprisonment for a term not exceeding two years, with or without hard labour, and whenever any such document has been admitted in evidence, the court or the person who admitted the same may on request direct that the same shall be impounded, and be kept in the custody of some officer of the court or other proper person, for such period or subject to such conditions as the court or person thinks fit.

LIST OF ABBREVIATIONS

A.P.	Arios Pagos (the high Court of Greece - in Greek Άρειος Πάγος)
BGB	Bürgerliches Gesetzbuch (the German Civil Code)
C.L.R.	Commercial Law Review (Greek legal periodical - in Greek Επιθεώρηση Εμπορικού Δικαίου)
CPC	Civil Procedure Code (Greek)
CPrML	Code of Private Maritime Law (Greek)
CPuML	Code of Public Maritime Law (Greek)
FlaggenRG	Flaggenrechtsgesetz Gesetz über das Flaggenrecht der Seeschiffe und die Flaggenführung der Binnenschiffe (German Act for the law of the flag of sea-going ships and for the flying of flag of the inland waters going ships)
L.D.	Legislative Decree (Greek)
ISR	Internationales Seeschiffsregister (German Act for the double Registration of seagoing Ships)
NAT	Greek Seamen Pension Fund
NoV	Nomikon Vima (Greek civil law periodical - in Greek Νομικόν Βήμα)
R.D.	Royal Decree (Greek)
SchiffsG	Gesetz über Rechte an eingetragene Schiffe und Schiffsbauwerken (German Act for the Rights on registered Ships and Ships under construction)
SchiffsRO	Schiffsregisterordnung (German Registration of Ships Regulations)
Sh.L.R.	Shipping Law Review (Greek legal periodical - in Greek Επιθεώρηση Ναυτιλιακού Δικαίου)

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