against him and we think that the jury did not receive a proper reminder of his defence. For these reasons we allowed the appeal against conviction.

Appeal allowed.

Solicitors: *Registrar of Criminal Appeals; Solicitor, Metropolitan Police.*

THE HALCYON SKIES

[1975 Folio No. 376]

1975 Oct. 15, 20, 22; Dec. 1

Brandon J.

Admiralty—Jurisdiction—Action in rem—Shipowners failing to pay employee's and employer's contribution to pension fund in respect of member of crew—Whether claim for contributions claim in debt or damages for "wages"—Contract of employment not being ordinary mariner's contract—Whether maritime lien in respect of contributions—Administration of Justice Act 1956 (4 & 5 *Eliz.* 2, *c.* 46), *ss.* 1 (1) (*o*), 3 (3)

Ships' Names—Halcyon Skies

The plaintiff was employed under a contract, which was not an ordinary mariner's contract, as a deck officer and crew member of the tanker *Halcyon Skies*. The contract provided that he would be a member of a pension fund approved by the Board of Inland Revenue, that the employing company, the owners of the tanker, would deduct from his pay his contribution to the fund and pay the money deducted with the employer's contribution in respect of the plaintiff to the pension fund. The plaintiff's contribution was deducted from his pay but the company neither paid that sum nor the employer's contribution to the fund by the time it went into liquidation. The ship was appraised and sold under a court order and the proceeds of sale were paid into court. The plaintiff claimed both the sum of £52·97 deducted from his pay and the employer's contribution of £97·46 as a debt or damages for breach of contract and a declaration that he held a maritime lien for wages against the proceeds of sale.

On the question whether the plaintiff's claim was by a member of the crew of a ship for wages within the meaning of section 1 (1) (*o*) of the Administration of Justice Act 1956[1]:—

Held, giving judgment for the plaintiff, (1) that it had been rightly conceded that the plaintiff's claim for the employee's contribution deducted from his salary was a claim within section 1 (1) (*o*) of the Act, for the plaintiff had a good claim in debt for those wages; that the failure of the company to pay the employer's contribution was a breach of contract for

[1] Administration of Justice Act 1956, s. 1 (1): see post, p. 22B–C.

which the plaintiff was entitled to recover damages and, since the plaintiff was entitled to the pension benefits he would have received if the contributions had been paid, the measure of damages was the amount of the contribution that the company should have paid under the contract, namely, £97·46 (post, pp. 21C–D, E–F, 24D–F, 25D).

(2) That the plaintiff's claim for the employer's contribution was a claim for " wages " within the meaning of section 1 (1) (*o*) of the Act; and that, since paragraph (*o*) applied both to a claim for wages in debt and in damages and to a special contract as well as an ordinary mariner's contract, the plaintiff was entitled to a maritime lien under section 3 (3) of the Act for both the employer's and the employee's contribution to the pension fund (post, pp. 26G, 31C–E).

Parry v. *Cleaver* [1970] A.C. 1, H.L.(E.) applied.

The British Trade [1924] P. 104 not followed.

The following cases are referred to in the judgment:

Arosa Kulm (No. 2), The [1960] 1 Lloyd's Rep. 97.

Arosa Star, The [1959] 2 Lloyd's Rep. 396.

Beswick v. *Beswick* [1968] A.C. 58; [1967] 3 W.L.R. 932; [1967] 2 All E.R. 1197, H.L.(E.).

Blessing, The (1878) 3 P.D. 35.

British Trade, The [1924] P. 104.

Elmville (No. 2), The [1904] P. 422.

Fairport, The [1965] 2 Lloyd's Rep. 183.

Fairport (No. 3), The [1966] 2 Lloyd's Rep. 253.

Gee-Whiz, The (Note) [1951] 1 All E.R. 876; [1951] 1 Lloyd's Rep. 145.

Great Eastern, The (1867) L.R. 1 A. & E. 384.

Hamilton v. *Baker (The Sara)* (1889) 14 App.Cas. 209, H.L.(E.).

Hartland v. *Diggines* [1926] A.C. 289, H.L.(E.).

Justitia, The (1887) 12 P.D. 145.

Liverpool (No. 2), The [1963] P. 64; [1960] 3 W.L.R. 597; [1960] 3 All E.R. 307, C.A.

Northcote (C. & C. J.) v. *Henrich Björn (Owners) (The Henrich Björn)* (1886) 11 App.Cas. 270, H.L.(E.).

Parry v. *Cleaver* [1970] A.C. 1; [1969] 2 W.L.R. 821; [1969] 1 All E.R. 555, H.L.(E.).

Phillips v. *Highland Railway Co. (The Ferret)* (1883) 8 App.Cas. 329, P.C.

Tergeste, The [1903] P. 26.

Veritas, The [1901] P. 304.

Westport (No. 4), The [1968] 2 Lloyd's Rep. 559.

The following additional cases were cited in argument:

Albazero, The [1975] 3 W.L.R. 491; [1975] 3 All E.R. 21, C.A.

Barclays Bank Ltd. v. *Naylor* [1961] Ch. 7; [1960] 3 W.L.R. 678; [1960] 3 All E.R. 173.

Beaver, The (1800) 3 Rob. 92.

Bold v. *Brough, Nicholson & Hall Ltd.* [1964] 1 W.L.R. 201; [1963] 3 All E.R. 849.

Brown v. *Bullock* [1961] 1 W.L.R. 1095; [1961] 3 All E.R. 129, C.A.

Elizabeth, The (1819) 2 Dods. 403.

Hewlett v. *Samuel Allen (trading as F. Allen & Sons)* [1894] A.C. 383, H.L.(E.).

Hill v. *C. A. Parsons & Co. Ltd.* [1972] Ch. 305; [1971] 3 W.L.R. 995; [1971] 3 All E.R. 1345, C.A.

Household Finance Corporation of Canada v. *Hill* (1970) 13 D.L.R. (3d) 737.

London County Council v. *Henry Boot & Sons Ltd.* [1959] 1 W.L.R. 1069; [1959] 3 All E.R. 636, H.L.(E.).

Robinett v. *The Exeter* (1799) 2 C.Rob. 261.

ACTION

By a writ dated June 18, 1975, the plaintiff, Anthony Powell, commenced an action in rem against the owners of and persons interested in the proceeds of the sale of the ship *Halcyon Skies*. The action was defended by Court Line Ltd. in liquidation, the first defendants, and by Bankers Trust International Ltd., the second defendants, who were the second mortgagees and had been made a party to the proceedings. By amendment during the course of the hearing, the plaintiff claimed against the first defendants employers' contributions of £97·46 and employee's contributions of £52·97 to the Merchant Navy Officers' Pension Fund, being part of the wages earned by the plaintiff in the course of his employment as an officer and crew member on board the ship *Halcyon Skies* during the period from June 1, 1974, to November 16, 1974, pursuant to the plaintiff's contract of employment with Court Line Ltd., the owners of the *Halcyon Skies* during the period; alternatively for damages of £97·46 for breach of that contract; alternatively an order for specific performance of the term of the contract requiring payment of £97·46 to the Merchant Navy Officers' Pension Fund. He also claimed against both defendants a declaration that the plaintiff held a maritime lien for wages against the proceeds of sale of the ship *Halcyon Skies* in respect of the sums of £97·46 and £52·97. At the hearing, the defendants conceded the claim for £52·97 in respect of employee's contributions to the fund.

The facts are stated in the judgment.

Geoffrey Brice for the plaintiff. In an Admiralty action the plaintiff seeks to recover the sum of £97·46, the amount of contribution to the pension fund which should have been paid by the employers into that fund which was a properly constituted pension fund recognised by the Inland Revenue. The question is whether the sum due is a claim for wages within section 1 (1) (*o*) of the Administration of Justice Act 1956 so inviting the Admiralty jurisdiction; whether the plaintiff is entitled to a maritime lien against the proceeds of sale of the *Halcyon Skies* and whether he is entitled to priority over other competing claims.

The pension contributions were paid directly to a third party; nevertheless those contributions formed part of the officer's wages on board ship. The cause of action has been formulated in debt following *The British Trade* [1924] P. 104 and *The Fairport* (*No.* 3) [1966] 2 Lloyd's Rep. 253, 254.

In *The Fairport* (*No.* 3) which is in the plaintiff's favour, Karminski J. held that insurance and pension contributions were part of a seaman's wages but gave no reasons for so holding. The employers' contributions were for the benefit of the plaintiff. There was a contractual obligation to pay the moneys to a third party for the benefit of the plaintiff. The

moneys could have been paid directly to the seaman for him to pay over to the fund.

The claim has been pleaded in debt. Following *Beswick* v. *Beswick* [1968] A.C. 58 the cause of action could equally be in damages although it has not been pleaded. Again following *Beswick* the plaintiff although not going so far could ask for specific performance.

[Leave was given to amend the pleadings to include a claim in damages. By consent the second mortgagees were joined as second defendants.]

Closer perusal of the relevant cases has shed little light on the question whether the claim should be in debt or in damages. See *The Gee-Whiz* (*Note*) [1951] 1 Lloyd's Rep. 145; *The Arosa Star* [1959] 2 Lloyd's Rep. 396; *The Arosa Kulm* (*No.* 2) [1960] 1 Lloyd's Rep. 97; *The Fairport* [1965] 2 Lloyd's Rep. 183; *The Fairport* (*No.* 3) [1966] 2 Lloyd's Rep. 253; and *The Westport* (*No.* 4) [1968] 2 Lloyd's Rep. 559. It is not clear in any of those cases what was the cause of action. The plaintiff has a good cause of action in debt because a term can be implied in the contract of service that if Court Line did not pay their contributions into the pension fund those contributions would be handed over to the plaintiff. It would then be the plaintiff's responsibility to pay the equivalent amount into the pension fund.

The concept of what is a wage has changed over the years. The Truck Act 1831 prohibited in certain trades the payment of wages in goods or otherwise than in the current coin of the realm. The Truck Acts 1831 to 1940 had a limited and uncertain application. [Reference was made to *Encyclopaedia of Labour Relations Law* (B. A. Hepple and P. O'Higgins) (1972), para. 2.038 at p. 2022.] The Payment of Wages Act 1960 removed some of the restrictions imposed by the Truck Acts.

The defendants have conceded the claim to the employee's contribution and have accepted that his contribution is part of his wages. The same principle applies to the non-conceded claim. [Reference was made to *Hewlett* v. *Samuel Allen* (*trading as F. Allen & Sons*) [1894] A.C. 383.] *The Albazero* [1975] 3 W.L.R. 491 although not directly on the point is helpful.

The plaintiff had an option whether to sue in debt or for damages. Had the contract of service provided for the use of a car the plaintiff would not have been able to sue in debt if he did not get the use of the car. See *Chitty on Contracts*, 23rd ed. (1968), para. 634 and *Beswick* v. *Beswick* [1968] A.C. 58. The nature of contributions to pension funds was discussed in *Parry* v. *Cleaver* [1970] A.C. 1, 13–17 and is in support for the contention that the employer's contribution can properly be regarded as wages and entitled to the maritime lien.

In the Admiralty jurisdiction the concept of a wage was always broadly interpreted: see *Williams & Bruce, Admiralty Practice*, 3rd ed. (1902), p. 202; *Robinett* v. *The Exeter* (1799) 2 C.Rob. 261; *The Beaver* (1800) 3 Rob. 92; *The Elizabeth* (1819) 2 Dods. 403; *The Great Eastern* (1867) L.R. 1 A. & E. 384 and *The Blessing* (1878) 3 P.D. 35.

There should be no distinction made between the claims, both claims are within the meaning of section 1 (1) (*o*) of the Act of 1956 and entitled to a maritime lien.

David Steel for the defendants. The plaintiff's claim under the Act

of 1956 must be for a wage. The question is whether the employer's contributions to the pension fund are wages. Is a claim for wages equivalent to a claim for breach of contract to pay wages? It is clear that the plaintiff is not entitled to recover the employer's contribution in debt. The scheme of the pension fund required the employer to pay his contributions directly to the fund. There is nothing in the rules of the fund about the employer's contributions being on behalf of the employees. There is an overall contribution by the company. The employee has no right to claim back from the fund the moneys contributed by the employer. The only party who can sue the employer for failing to pay his contribution is the fund itself. No contract exists between the employee and the employer concerning the employer's contributions. In contrast there is a contract between the employer and the employee concerning the employee's contributions.

The employee could always revoke the authority authorising the deduction from his wage and ask for the amount because the employee's contribution was part of his wages. That point has been conceded. The revocation of authority is one way to explain *The Fairport* [1965] 2 Lloyd's Rep. 183. No concession is made concerning the employer's contribution. Those contributions are a matter for the pension fund and Court Line. The plaintiff has no cause of action either in debt or in damages.

Employer's contributions to the pension fund are not part of a man's wages. In *The Fairport* [1965] 2 Lloyd's Rep. 183, 188, Hewson J. did not allow a claim in respect of contribution to the Marine Education Fund. This was a statutory obligation. But contributions made by an employer whether statutory under the National Insurance scheme or contractual under a voluntary pension scheme are of no concern to the employee. The fund should be the claimant. [Reference was made to *Beswick* v. *Beswick* [1968] A.C. 58.]

The plaintiff has suffered no loss. On the evidence it appears that even if the contributions are not recovered it is unlikely that the plaintiff would lose his future pension rights. The trustees of the fund have a discretion to pay the same future pension benefits to the plaintiff as he would be entitled to as of right as if they had been paid. The probability that the plaintiff would suffer loss is very remote. Unless the trustees exercise their discretion against the plaintiff he cannot say that he has suffered loss. He has only suffered a contingent loss and his claim is premature.

The fund has a good cause of action in personam. There are many other employees of Court Line who are not seamen: they can only rely on section 319 of the Companies Act 1948 for protection in a liquidation. The concept of wages should be construed in the same way as it is construed in the Companies Act 1948. It is unfair to other employees of the same company that seamen should have priority.

An employee receives a wage, a sum of money payable for work done. The employee can request the employer to pay out a sum of money to a third person by means of an allotment order. That sum of money is part of a man's wages but a payment made by the employer to a third party and which relieves the employee of any legal liability to pay that sum is

not part of the employee's wages. There is a difference. See *London County Council* v. *Henry Boot & Sons Ltd.* [1959] 1 W.L.R. 1069. Reliance is placed on *Hewlett* v. *Samuel Allen* (*trading as F. Allen & Sons*) [1894] A.C. 383.

An employer's statutory liability to pay National Insurance contributions cannot be described as an emolument. Section 742 of the Merchant Shipping Act 1894 defined "wages" as including emoluments. *The Gee-Whiz* (*Note*) [1951] 1 All E.R. 876 is not analogous. [Reference was made to *The British Trade* [1924] P. 104; *Hill* v. *C. A. Parsons & Co. Ltd.* [1972] Ch. 305.] An emolument has to be paid in cash. The benefit even if it was an emolument was not a wage: see *Household Finance Corporation of Canada* v. *Hill* (1970) 13 D.L.R. (3d) 737. If the plaintiff chose to leave the Merchant Navy he could withdraw his contribution to another pension fund but he has no claim to the contribution made on his behalf by the employer.

The trust was approved by the Inland Revenue. If not specially exempted an employer's contribution to a pension fund has to be treated as part of the employee's income for tax purposes: see section 220 (1) of the Income and Corporation Taxes Act 1970. The purpose of the section was to remedy the abuse caused by non-genuine schemes in favour of company directors. Then the Inland Revenue found that the genuine pension schemes were caught. The section is based on fiction. [Reference was made to *Hartland* v. *Digginnes* [1926] A.C. 289.]

Emoluments are narrower in scale in the Merchant Shipping Acts than in Income Tax Acts.

The Arosa Star [1959] 2 Lloyd's Rep. 396 is in the plaintiff's favour. It is not clear whether the contributions there were statutory or contractual. The fact that a master could recover National Insurance contributions as disbursements is not inconsistent with this argument. In *The Gee-Whiz* (*Note*) [1951] 1 Lloyd's Rep. 145; *The Arosa Kulm* (*No.* 2) [1960] 1 Lloyd's Rep. 97; *The Fairport* [1965] 2 Lloyd's Rep. 183; *The Fairport* (*No.* 3) [1966] 2 Lloyd's Rep. 253 and *The Westport* (*No.* 4) [1968] 2 Lloyd's Rep. 559, no distinction was drawn between the various heads of claim. The question was not raised about a payment made by the shipowner. The contribution was not deducted from the wages.

It is accepted that the Admiralty jurisdiction has been extended to include a claim for damages for wrongful dismissal, but the plaintiff's action is under section 1 (1) (*o*) of the Act of 1956 and must be for a "wage." There is no basis for the claim and there should be no further extension of the Admiralty jurisdiction.

Brice in reply. There is no exhaustive list of benefits a seaman can receive. Benefits can always be altered in a changing situation. Any benefit to a seaman is always the concern of the Admiralty jurisdiction and on that aspect there can be no limit to the Admiralty jurisdiction. In *London County Council* v. *Henry Boot & Sons Ltd.* [1959] 1 W.L.R. 1069 the court was only concerned with what had been intended by the parties. Payment to a third party by the employer on behalf of the employee is part of the employee's income: see *Bold* v. *Brough, Nicholson & Hall Ltd.* [1964] 1 W.L.R. 201 and *Barclays Bank Ltd.* v. *Naylor* [1961] Ch. 7.

In the Admiralty jurisdiction wages mean payments in money or money's

worth whether paid directly to the seaman or a third party. That definition does not include benefits which could be enjoyed by a seaman when performing his part of the contract but which could not be evaluated in money terms, for example, a film show on board ship. The employer's contribution must be an emolument: see *Williams & Bruce, Admiralty Practice*, 3rd ed., p. 560. The employer was compelled by contract to pay the sum as consideration for the seaman serving on board ship.

Cur. adv. vult.

December 1. BRANDON J. read the following judgment. This is another action arising out of the collapse of Court Line in 1974. It raises the question whether a seaman can recover, in an Admiralty action for wages, and with the priority accorded by a maritime lien, the amounts of pension contributions which the shipowners employing him should have paid to a pension fund on his behalf but have failed so to pay. It is, I was informed by counsel, a test case, on the result of which a considerable number of other cases depend.

The material facts are not in dispute. The plaintiff, Anthony Powell, is an officer in the British Merchant Navy. He was employed by Court Line Ltd. as a deck officer on board their tanker *Halcyon Skies* from June 1, to November 16, 1974. His contract of employment provided, first, that he should be a member of the Merchant Navy Officers' Pension Fund, which is an occupational pension scheme approved by the Board of Inland Revenue; secondly, that Court Line should pay employer's contributions in respect of him to the fund; and, thirdly, that Court Line should, with his authority, deduct employee's contributions from his pay and pay them also to the fund.

On August 16, 1974, while the plaintiff was still serving in the *Halcyon Skies*, a petition was presented in the Companies Court for the winding up of Court Line, and a provisional liquidator was appointed. On October 7, 1974, an order for winding up was made and the provisional liquidator was appointed liquidator. Early in November 1974 joint liquidators were appointed in place of the previous single liquidator.

The amount of the employer's contributions which Court Line should have paid to the fund in respect of the plaintiff's employment on board the *Halcyon Skies* was £97·46. The amount of the employee's contributions, which Court Line properly deducted from the plaintiff's pay and should thereafter have paid to the fund, was £52·97. In the events which occurred, however, neither of those sums was ever paid to the fund by Court Line.

On October 14, 1974, this court, in an action brought against the *Halcyon Skies* by Bankers Trust International Ltd. as second mortgagees, ordered her to be appraised and sold. The ship was sold pursuant to that order and the proceeds of sale were paid into court. The plaintiff has brought the present action, with the leave of the Companies Court, against those proceeds of sale, in order to recover the two amounts of £97·46 for employer's contributions and £52·97 for employee's contributions referred to above. The action is defended by Court Line in liquidation, and during the hearing I made an order by consent that

Bankers Trust International Ltd., who have a competing claim on the proceeds of sale, should be joined as second defendants to the action, so that they should be bound by its result. They have not, however, been separately represented before me, being content that counsel instructed on behalf of the joint liquidators should protect their interests also.

The case for the plaintiff, in relation to each of the sums claimed, is (1) that he has a good cause of action, either in debt or in damages, against Court Line, in respect of it; (2) that his claim, whether it be in debt or damages, is a claim for wages within section 1 (1) (*o*) of the Administration of Justice Act 1956, so that he can invoke the Admiralty jurisdiction of the court in respect of it; and (3) that he has a maritime lien for the claim, so that (a) he can proceed in rem against the proceeds of sale of the ship under section 3 (3) of the Act of 1956, and (b) he is entitled to priority over the competing claim of the second defendants as second mortgagees against the same fund.

The first defendants at one time disputed the plaintiff's case in relation to both sums. At the hearing, however, his case in relation to the sum of £52·97 for employee's contributions was conceded. This concession with regard to employee's contributions was, in my view, rightly made. So far as cause of action is concerned, the plaintiff has, in my opinion, a good claim in debt. He had under his contract of employment given Court Line authority to deduct such contributions from his pay and pay them to the fund. Court Line had acted on the first part of that authority but not on the second. In these circumstances the plaintiff was entitled to revoke the second part of the authority, namely, for payment of the sums deducted to the fund, and to require Court Line to pay such sums to him instead. This he did by issuing his writ in the present action. So far as the nature of the claim is concerned there can, I think, be no doubt that the sums concerned, having been deducted from the plaintiff's pay in the first place, were part of his wages for the purpose of section 1 (1) (*o*) of the Act of 1956. I also think, for reasons which will appear later, that he had a maritime lien in respect of the claim.

I turn therefore to the matter which remains in dispute, namely, the claim in respect of employer's contributions. Claims by seamen, including officers, for wages in Admiralty have a long history. Before 1861 the High Court of Admiralty had jurisdiction over such claims, but only in cases where the seaman had been employed under an ordinary mariner's contract, as distinct from a special contract. In the latter case the common law courts had exclusive jurisdiction.

Since 1861 the jurisdiction has been defined by statute. Section 10 of the Admiralty Court Act 1861 provided:

> "The High Court of Admiralty shall have jurisdiction over any claim by a seaman of any ship for wages earned by him on board the ship, whether the same be due under a special contract or otherwise, and also over any claim by the master of any ship for wages earned by him on board the ship, and for disbursements made by him on account of the ship: . . ."

This provision was repealed by section 226 (1) of, and Schedule 6 to, the Supreme Court of Judicature (Consolidation) Act 1925, and replaced by

section 22 (1) (*a*) (viii) of that Act, which was in substantially similar terms. The jurisdiction so conferred was in either case exercisable either in rem or in personam: see section 25 of the Act of 1861 and section 33 (2) of the Act of 1925.

Sections 22 and 33 of the Act of 1925 were in turn repealed by section 57 (2) of, and Schedule 2 to, the Administration of Justice Act 1956 and replaced, as regards section 22 (1) (*a*) (viii) by section 1 (1) (*o*), and as regards section 33 (2) by section 3, of the latter Act. Section 1 (1) (*o*) of the Administration of Justice Act 1956 provided:

> "The Admiralty jurisdiction of the High Court shall be as follows, that is to say, jurisdiction to hear and determine any of the following questions or claims— . . . (*o*) any claim by a master or member of the crew of a ship for wages . . ."

Section 3 of the Act of 1956 provided that the jurisdiction so conferred could be exercised both in personam (subsection (1)) and in rem (subsections (3) and (4)). These provisions remain applicable today.

Although both according to the law administered by the High Court of Admiralty before 1861 and by the express terms of section 10 of the Admiralty Court Act 1861 and section 22 (1) (*a*) (viii) of the Supreme Court of Judicature (Consolidation) Act 1925, the Admiralty jurisdiction over claims for wages was limited to wages earned on board the ship, this concept was very broadly interpreted. In particular the jurisdiction was regularly exercised, both before and after 1861, not only in respect of claims in debt for unpaid wages in the strict sense, but also in respect of claims in damages for wrongful dismissal, including claims for wages lost and for the cost of repatriation (viaticum). As to this see, as regards the period before 1861, the cases set out in notes (y) and (z) in *Williams & Bruce, Admiralty Practice*, 3rd ed. (1902), p. 202; and, as regards the period after 1861, *The Great Eastern* (1867) L.R. 1 A. & E. 384, *The Blessing* (1878) 3 P.D. 35 and *Phillips* v. *Highland Railway Co.* (*The Ferret*) (1883) 8 App.Cas. 329.

There were other extensions of the wages concept. The claims covered by it were held to include emoluments other than wages in the strict sense, which were payable direct to the seaman, such as victualling allowances and bonuses: *The Tergeste* [1903] P. 26 and *The Elmville* (*No.* 2) [1904] P. 422. This approach was in accordance with section 742 of the Merchant Shipping Act 1894, which defined "wages" as including "emoluments."

It was further held in one case that the jurisdiction in wages extended to claims for damages for breach of a seaman's contract of employment during its subsistence: *The Justitia* (1887) 12 P.D. 145. That was a strange case, in which seamen recovered, in an Admiralty action in personam for wages, general damages for hardship suffered and risks run when they were obliged to remain on board a ship while she was being used, contrary to the articles on which they had been engaged, as an armed cruiser in support of insurgents.

It is to be observed that, when the Admiralty jurisdiction over claims for wages was redefined by Parliament in 1956, the requirement that wages should have been "earned on board the ship" was removed. This

was in accordance with the description of the corresponding "maritime claim" in paragraph 1 (m) of article 1 of the International Convention relating to the Arrest of Seagoing Ships, signed at Brussels on May 10, 1952, which refers simply to claims arising out of "wages of masters, officers, or crew."

Since 1950 there have been a number of further cases bearing on the scope of Admiralty claims for wages. In *The Gee-Whiz* (*Note*) [1951] 1 Lloyd's Rep. 145, Willmer J. held that an English master was entitled to recover, in an Admiralty action in rem for wages, the amount of both the employer's and the employee's National Insurance contributions which the shipowner had agreed to pay.

In *The Arosa Star* [1959] 2 Lloyd's Rep. 396, the Supreme Court of Bermuda (Worley C.J.) held that a foreign seaman could recover, in an Admiralty action in rem for wages and with the priority accorded by a maritime lien, full pay during sick leave and employer's contributions for social insurance, as being emoluments in the nature of wages to which he was entitled under his contract of employment.

In *The Arosa Kulm* (*No.* 2) [1960] 1 Lloyd's Rep. 97, Hewson J. held that a foreign master and crew could recover, in an Admiralty action in rem for wages, social benefit contributions said to be similar to National Insurance contributions, which were payable by the shipowners under their contracts of employment.

In *The Fairport* [1965] 2 Lloyd's Rep. 183, Hewson J. held that a foreign master could recover, in an Admiralty action in rem for disbursements, notional deductions from unpaid seamen's wages in respect of insurance and pension contributions payable under their contracts of employment. He further expressed the opinion that the seamen themselves, who had already recovered their wages net of such contributions in an earlier action, would have been entitled to include the amounts of such contributions in their own wages claim.

In *The Fairport* (*No.* 3) [1966] 2 Lloyd's Rep. 253 the question arose whether the master's maritime lien for disbursements extended to the amounts recovered by him in respect of insurance and pension contributions under the judgment in the preceding case. Karminski J. held that his lien did so extend, on the ground that such contributions formed part of the seamen's wages.

In *The Westport* (*No.* 4) [1968] 2 Lloyd's Rep. 559, Karminski J. held that a foreign master could recover, in an Admiralty action in rem for disbursements, first, sums which he was bound to pay in respect of deductions from seamen's wages for insurance, pension, provident and union contributions; and, secondly, sums which he was bound to pay jointly with the owners in respect of owners' own insurance and other contributions. The ground of the decision seems to have been that all the contributions concerned were emoluments of the seamen under their contracts of employment or according to their national law.

In so far as these more recent cases between 1951 and 1968 decide that, where a seaman is employed by a shipowner on board a ship, employer's as well as employee's contributions payable in respect of him to pension or other similar funds are, if unpaid, recoverable by him as

wages, they are clearly favourable to the plaintiff's claim in the present case. I feel bound to say, however, that I do not find in any of those cases a clear analysis of the basis on which such contributions are so recoverable. In particular I do not find any analysis of the primary question whether the cause of action in respect of such claims is in debt or damages, or of the further question whether, if the cause of action is in damages, they can nevertheless still be regarded as wages claims in Admiralty. In these circumstances, while paying due regard to the cases concerned and due respect to the judges who decided them, I think that it will be helpful to approach the matter afresh in the light of the principles applicable. In doing so I shall divide the problem up into four parts. First, is the plaintiff's cause of action in debt or in damages? Second, if his cause of action is in damages, what is the measure of damages recoverable? Third, is the claim one for wages within the meaning of section 1 (1) (*o*) of the Act of 1956? Fourth, does the plaintiff have a maritime lien in respect of it?

(1) *Is the plaintiff's cause of action in debt or in damages?*

It was argued for the first defendants that the plaintiff's only cause of action was in damages for breach of contract. It was argued for the plaintiff, on the other hand, that he had a cause of action in debt, on the basis that it was an implied term of his contract of employment that, if Court Line did not pay the employer's contributions to the fund, they would pay them to him instead. In my opinion it is not necessary to imply the term contended for in order to give business efficacy to the contract and it would not therefore be right to do so. The true view, I think, is that the failure of Court Line to pay the employer's contributions was a breach of contract for which the plaintiff is entitled to recover damages at law. It follows that his cause of action in respect of such contributions is in damages and not in debt. It seems that, if damages were not an adequate remedy, the plaintiff could seek the alternative equitable remedy of specific performance: *Beswick* v. *Beswick* [1968] A.C. 58. For reasons which will appear, however, I am of opinion that an adequate remedy in damages is available.

(2) *On the footing that the plaintiff's cause of action is in damages, what is the measure of damages recoverable?*

For the plaintiff it was argued that the measure of damages was the amount of the unpaid contributions, on the ground that it was only by paying such contributions to the fund himself that he could obtain the same legal rights to pension benefits as he would have had if Court Line had fulfilled their obligations. For the first defendants it was argued that the measure of damages was the value of future pension benefits which the plaintiff had lost; that the trustees of the fund had a discretion to pay him ex gratia, even though the contributions had not been paid, the same future pension benefits as he would have been entitled to as of right if they had been paid; that the evidence showed that, if the contributions proved irrecoverable, the trustees would be likely, if not certain, to exercise their discretion to produce this result; and that, in

these circumstances, the plaintiff would not suffer any loss of future pension benefits at all.

I do not accept the argument for the first defendants on this matter. The plaintiff is entitled, so far as an award of money can do it, to be put in the same position as if Court Line had performed their obligations. If they had performed their obligations of paying the employer's contributions to the fund, the plaintiff would have been entitled as of right to certain future pension benefits. Because they have not performed their obligations, his legal entitlement to such benefits has been reduced. It is no answer to say that the trustees of the fund are likely to make up the difference on an ex gratia basis. The plaintiff is entitled to be put back in a position where he has a legal entitlement to the benefits concerned, and the way in which that can most readily be done is by awarding him money so that he can pay to the fund himself the contributions which Court Line should have paid in respect of him. If he had already made such payments out of his own resources, it could not, I think, be successfully argued that he had acted otherwise than reasonably in mitigating his damage. It cannot make any difference that he has not in fact done so. As to the principle that payments made voluntarily or out of benevolence do not reduce a person's entitlement to damages: see *Parry* v. *Cleaver* [1970] A.C. 1, 13–14 by Lord Reid.

For the reasons which I have given I hold that the proper measure of damages for Court Line's admitted breach of contract in failing to pay the employer's contributions is the amount of those contributions, namely £97·46.

(3) *Is the claim one for wages within the meaning of section 1 (1) (o) of the Administration of Justice Act 1956?*

The nature of contributions to pension funds was discussed, in another context, in *Parry* v. *Cleaver* [1970] A.C. 1. Lord Reid said with regard to them, at p. 16:

> "What, then, is the nature of a contributory pension? Is it in reality a form of insurance or is it something quite different? Take a simple case where a man and his employer agree that he shall have a wage of £20 per week to take home (leaving out of account P.A.Y.E., insurance stamps and other modern forms of taxation) and that between them they will put aside £4 per week. It cannot matter whether an insurance policy is taken out for the man and the £4 per week is paid in premiums, or whether the £4 is paid into the employer's pension fund. And it cannot matter whether the man's nominal wage is £21 per week so that, of the £4, £1 comes from his 'wage' and £3 comes from the employer, or the man's nominal wage is £23 per week so that, of the £4, £3 comes from his 'wage' and £1 comes from the employer. It is generally recognised that pensionable employment is more valuable to a man than the mere amount of his weekly wage. It is more valuable because by reason of the terms of his employment money is being regularly set aside to swell his ultimate pension rights whether on retirement or on disablement. His earnings are greater than his weekly wage.

His employer is willing to pay £24 per week to obtain his services, and it seems to me that he ought to be regarded as having earned that sum per week. The products of the sums paid into the pension fund are in fact delayed remuneration for his current work. That is why pensions are regarded as earned income."

This authoritative explanation of the nature of contributions to a pension fund seems to me to justify the view that employer's contributions to such a fund, as well as employee's contributions, can properly be regarded as part of an employee's total wages in the broad sense of that word.

That view gains further support from the consideration that employer's contributions to pension funds are, unless specially exempted, treated as part of an employee's income from his employment for income tax purposes: see section 220 (1) of the Income and Corporation Taxes Act 1970, and compare *Hartland* v. *Digginnes* [1926] A.C. 289. It is true that, since the particular pension scheme here concerned was one approved by the Board of Inland Revenue, the contributions payable by Court Line were exempted from the operation of section 220 (1) by the provisions of section 221 of the Act of 1970. This does not, however, alter the basic concept that such contributions are, in principle, part of the employee's total earnings or remuneration. This concept appears to me to accord with the reality of the matter.

Does it make any difference that the plaintiff's claim is not, if I am right in my answer to question (1) above, a claim in debt for the contributions themselves, but a claim in damages for breach of contract in failing to pay them? In my judgment, it does not, because the Admiralty jurisdiction in wages has long extended, as I explained earlier, to claims founded in damages as well as debt. Further, that extended jurisdiction has not only been exercised regularly in respect of claims for damages after termination of the contract of employment by wrongful dismissal, but also at least once prior to 1951 in respect of a claim for damages for breach of such contract during its subsistence. Indeed it may well be that the reason why the judges, who decided the group of further cases from 1951 to 1968 referred to above, did not pause to analyse the precise cause of action on which the claims in respect of employer's contributions succeeded was that they did not think it mattered, so far as the seaman's right to recover was concerned, whether such cause of action was in debt or in damages.

For the reasons which I have given, I hold that the plaintiff's claim relating to employer's contributions is a claim for wages within the meaning of section 1 (1) (*o*) of the Administration of Justice Act 1956 so that the plaintiff is entitled to invoke the Admiralty jurisdiction of the court in respect of it.

(4) *Does the plaintiff have a maritime lien in respect of his claim?*

It appears to me that the contract under which the plaintiff was employed in this case was a special contract rather than an ordinary mariner's contract. It is, therefore, necessary to consider what is the

law with regard to the existence of a maritime lien in respect of wages claims founded on a special contract.

For the plaintiff it was contended that, provided a claim was a wages claim within section 1 (1) (*o*) of the Administration of Justice Act 1956, then, whether the claim arose out of an ordinary mariner's contract or a special contract, there was a maritime lien in respect of it. Counsel for the first defendants, while arguing strenuously that the plaintiff's claim was not within section 1 (1) (*o*) at all, did not contend that, if it was, the circumstance that it arose out of a special contract rather than an ordinary mariner's contract prevented there being a maritime lien in respect of it.

The difficulty, however, is that there is an earlier decision of this court that, in certain cases at any rate, a seaman, who would have a maritime lien if his claim arose out of an ordinary mariner's contract, does not have such a lien when it arises out of a special contract. Doubts on the existence of a maritime lien in respect of claims under a special contract have also been expressed in more than one textbook in which the topic is discussed. In these circumstances, even though counsel for the first defendants disclaimed any reliance, in this connection, on the fact that the claim was founded on a special contract, I feel bound to examine the law on the matter and to express an opinion on it.

Two questions with regard to that law have arisen in the past, and this action, if I am right in holding that the plaintiff's claim is a wages claim within section 1 (1) (*o*) of the Administration of Justice Act 1956, raises a third such question.

The first question is whether, in a special contract case, there is a maritime lien in respect of claims in debt for unpaid wages, by which I mean wages in the strict sense together with emoluments in the nature of wages payable to the seaman direct. This question was expressly left open in *The British Trade* [1924] P. 104; it was treated as still open in the only modern English textbook on the subject, *Price, Law of Maritime Liens* (1940), at pp. 58–59; and it has not, so far as I know, at any time since 1924 been the subject matter of an express decision in a contested case. According to my experience, however, the existence of a lien in respect of such a claim has been generally assumed in uncontested cases over many years.

The second question is whether, in a special contract case, assuming that there is a maritime lien at least in respect of a claim in debt for unpaid wages, there is also such a lien in respect of a claim in damages for wrongful dismissal. This question was raised and answered in the negative in *The British Trade* [1924] P. 104, and has not, again so far as I am aware, been reconsidered in a contested case at any time since.

The third question raised, as I have said, by the present action is whether, in a special contract case and on the same assumption as I mentioned in relation to the second question, there is also a lien in respect of a claim in damages for breach, during the subsistence of the contract, of a term of it providing for the payment by the shipowners of employer's contributions to a fund for the benefit of the seaman.

These questions arise and present difficulty because of the history of Admiralty jurisdiction. I have already had to refer earlier to some

aspects of that history, and it is necessary that I should now deal with other aspects of it. A

The jurisdiction of the High Court of Admiralty over maritime claims, as it existed before 1840, was confirmed and extended by two statutes, the Admiralty Court Act 1840, and the Admiralty Court Act 1861. Some of the extensions involved giving the court jurisdiction in respect of new subject matters, for instance necessaries and masters' disbursements; others involved giving the court enlarged jurisdiction in B respect of subject matters over which it already had some jurisdiction, for instance damage, salvage and wages. In the case of damage and salvage, the existing jurisdiction related to matters arising on the high seas and the extension was to similar matters arising within the body of a county. In the case of wages, the existing jurisdiction related to wages due under an ordinary mariner's contract and the extension was to C wages due under a special contract.

It was supposed for a considerable period of time after the passing of the Acts of 1840 and 1861 that their effect was, in cases where they gave the court jurisdiction over new subject matters, to create new maritime liens in respect of claims relating to them. This supposition was subsequently held to have been erroneous by the House of Lords, which decided that the statutory provisions concerned did not create D new maritime liens, but only gave statutory rights of action in rem, in respect of such claims. This was decided, as regards the jurisdiction in respect of necessaries conferred by section 6 of the Act of 1840, in *C. & C. J. Northcote* v. *Henrich Björn* (*Owners*) (*The Henrich Björn*) (1886) 11 App.Cas. 270; and, as regards the jurisdiction in respect of masters' disbursements conferred by section 10 of the Admiralty Court Act 1861, in *Hamilton* v. *Baker* (*The Sara*) (1889) 14 App.Cas. 209. Following the E latter decision Parliament intervened promptly to give to a master the lien which the House of Lords had held that he did not have: see section 1 of the Merchant Shipping Act 1889, replaced subsequently by section 167 (2) of the Merchant Shipping Act 1894. That intervention, however, left the authority of *The Sara* (1889) 14 App.Cas. 209, as a decision on the effect of the Act of 1861, unimpaired. F

A further question arose, following the passing of the Acts of 1840 and 1861, as to whether, in cases where those Acts had enlarged the existing jurisdiction of the court as distinct from conferring new jurisdiction, it was intended that maritime liens recognised in respect of claims under the existing jurisdiction should extend also to claims of a similar kind under the enlarged jurisdiction. This further question did not fall to be decided in *The Henrich Björn* (1886) 11 App.Cas. G 270 or *The Sara* (1889) 14 App.Cas. 209. Significant observations with regard to it, however, were made by Lord Bramwell in the former case at pp. 282–283 and by Lord Halsbury L.C. in the latter case at p. 216. These observations appear to indicate that, if it had been necessary to decide the point, both Lord Bramwell and Lord Halsbury L.C. would have held that, in such cases, the relevant maritime lien H should be regarded as extending to claims under the enlarged jurisdiction.

The correctness of this last view, so far as damage and salvage cases are concerned, appears to have been accepted early on, and I do

not consider that it is any longer open to challenge today. An example of a salvage case relating to services rendered within the body of a county, in which it was assumed that a maritime lien existed, can be found in *The Veritas* [1901] P. 304.

So far as wages cases are concerned, however, the situation has been different, as appears from *The British Trade* [1924] P. 104 to which I referred earlier. In that case there were claims by a master and a chief officer, who had been employed under special contracts, first in debt for unpaid wages, expenses and disbursements, and secondly in damages for wrongful dismissal. The claims were not resisted by the shipowning company itself, but two other persons, a receiver for a debenture holder and a mortgagee, intervened in the action and put in a defence in which they disputed that the court had jurisdiction in rem over the claims at all. At the hearing the interveners indicated their willingness to pay off the claims for wages, expenses and disbursements, upon the court allowing them to be subrogated to the plaintiffs' rights in respect of such claims. They denied, however, that the plaintiffs, even assuming that there was jurisdiction in rem over their claims for wrongful dismissal, had a maritime lien in respect of such claims.

In view of the attitude taken by the interveners at the hearing, it was not necessary for the court to decide either whether the plaintiffs had a maritime lien in respect of their claims for wages, expenses and disbursements, or whether there was jurisdiction in rem in respect of their claims for wrongful dismissal. The first question went by default as a result of the interveners' concession, and the second question was left to be decided later on a reference if necessary. The court (Sir Henry Duke P.) did, however, decide that the plaintiffs did not, in any case, have a maritime lien in respect of their claims for wrongful dismissal.

The argument put forward for the interveners is set out on p. 107 of the judgment. It was that there could only be a maritime lien in respect of wages which had, in the words of section 10 of the Admiralty Court Act 1861 been "earned . . . on board the ship." In so arguing, the interveners appear to have been conceding that section 10 gave a lien in respect of wages due under a special contract, provided that such wages had been earned on board, but disputing that it gave a lien in respect of damages for wrongful dismissal which, according to the argument, had not been so earned. That argument, would, as I see it, lead to the conclusion not merely that there was no maritime lien in respect of claims in damages for wrongful dismissal arising out of a special contract, but that there was no Admiralty jurisdiction in respect of such claims under section 10 of the Act of 1861 at all.

While this was the argument put forward for the interveners, the judgment of the court was, as appears from pp. 111–112, based on other and wider grounds, which can be summarised as follows. First, that the claims of the plaintiffs in damages were founded on special contracts. Second, that the court had jurisdiction to entertain such claims only, if at all, by virtue of the extended jurisdiction conferred on it by the Admiralty Court Act 1861. Third, that the Act of 1861 was not, on the authority of the House of Lords in *The Sara* (1889) 14 App.

Cas. 209, to be construed as having created any new maritime liens in respect of the extended jurisdiction conferred by it. Fourth, that, having regard to these matters and assuming, without deciding, that the court had jurisdiction under the Act of 1861 to entertain the claims at all, there was no maritime lien in respect of them.

It seems to me that this reasoning, if carried to its logical conclusion, would produce the result, in a special contract case, not merely that a claim in damages for wrongful dismissal carried no maritime lien, but that a claim in debt for unpaid wages did not do so either. The existence of a lien in respect of the latter kind of claim was, however, conceded by the interveners in *The British Trade* [1924] P. 104, and has, as I indicated earlier, been generally assumed in uncontested cases over many years.

The claim in the present case differs from the claims in *The British Trade* [1924] P. 104 in that it is a claim for damages for breach of a term of the plaintiff's contract during its subsistence, rather than for damages for repudiation of such contract by wrongful dismissal. If, therefore, *The British Trade* had been decided on the narrow ground relied on by the interveners, if might have been possible to distinguish the present case from *The British Trade* on the basis of that difference. In support of such distinction it could have been said that, even if lost wages recovered as damages for wrongful dismissal did not qualify as wages earned on board the ship for the purposes of section 10 of the Act of 1861, unpaid employer's pension contributions, assuming them to be wages at all, did so qualify. Since, however, *The British Trade* was decided on the wider ground that there could be no maritime lien in respect of a claim which the court had power to entertain only by virtue of the extended jurisdiction conferred on it by the Admiralty Court Act 1861, I think that it is not open to the court to distinguish the present case on the basis which I have mentioned. The court must rather consider whether *The British Trade*, having been decided on that wider ground, should be followed or not.

I shall say at once that I have reached the conclusion, after the most careful consideration, that *The British Trade* [1924] P. 104 was incorrectly decided and ought not to be followed. With great respect to Sir Henry Duke P., I think that both the decision itself and the reasoning on which it was based were wrong.

As I explained earlier, the decisions in *The Henrich Björn* (1886) 11 App.Cas 270 and *The Sara* (1889) 14 App.Cas. 209 that no maritime liens had been created in respect of claims covered by the extended jurisdiction conferred on the court by the Acts of 1840 and 1861 were given in relation, and only in relation, to claims covered by new, as distinct from enlarged, jurisdiction. Further, as I also said earlier, there are observations in the speeches of Lord Bramwell in the former case and Lord Halsbury L.C. in the latter case which indicate that, if it had been necessary to decide the point, they would have held that, where existing jurisdiction had been enlarged, maritime liens recognised in respect of claims under the existing jurisdiction should be regarded as extending also to claims of a similar kind under the enlarged jurisdiction. There is, in my view, both in principle and on authority a vital distinction between the two kinds of case, and I think that the reasoning in *The British Trade* [1924] P. 104, since it takes no account of this distinction, cannot be supported.

I have considered whether the decision in *The British Trade*, on the footing that it cannot be supported on the wider ground given in the judgment, could nevertheless be supported on the narrower ground, based on the words in section 10 of the Admiralty Court Act 1861 "earned . . . on board the ship," which was relied on in the argument for the interveners. In my opinion, however, the decision cannot be supported on this narrower ground either.

As I said earlier, the requirement that wages, in order to be recoverable in Admiralty, should have been earned on board the ship existed, in theory at least, under the law as administered by the High Court of Admiralty before 1861. In practice, however, such limitation was never interpreted strictly and did not prevent that court, as was recognised in *The British Trade* [1924] P. 104, 108–110, from exercising jurisdiction, under the head of wages, over claims for wrongful dismissal arising out of ordinary mariners' contracts, or from according to seamen the same maritime lien in respect of such claims as they had in respect of claims for wages in the strict sense. In these circumstances it seems to me reasonable to infer that when the legislature, by section 10 of the Admiralty Court Act 1861, enlarged the existing jurisdiction over claims for wages due under ordinary mariners' contracts so as to cover similar claims due under special contracts, it intended, despite the use of the hallowed phrase "earned . . . on board the ship," that the enlarged jurisdiction should, so far as concerns the kinds of claims covered, be co-extensive with the existing jurisdiction.

For the reasons which I have given I would hold that the effect of section 10 of the Admiralty Court Act 1861 was, first, to give the court all the same jurisdiction over wages claims arising out of special contracts as it had previously had over wages claims arising out of ordinary mariners' contracts, including claims in damages for wrongful dismissal; and, secondly, to extend the maritime lien which had been recognised as existing in respect of the latter claims to the former claims.

If I am wrong in thinking that section 10 of the Act of 1861 achieved this result because of the inclusion in it of the words "earned . . . on board the ship," then I would hold that such result has nevertheless been achieved since by section 1 (1) (*o*) of the Administration of Justice Act 1956, which does not include those or any similar words.

I would add that I am glad to have been able to reach a conclusion which means that, so far as a seaman's right and remedies in Admiralty are concerned, the old distinction between a special contract and an ordinary mariner's contract is no longer significant. As pointed out in effect by Worley C.J. in *The Arosa Star* [1959] 2 Lloyd's Rep. 396, 402–403, special contracts are today the rule and what were formerly called ordinary mariners' contracts are the exception. That being so, it would, in my view, be a reproach to the law if seamen did not have the same rights and remedies in respect of claims under the former as under the latter.

There is one other argument put forward on behalf of the first defendants with which I must deal. This was that the fund was entitled, under a separate contract between it and Court Line, to claim the unpaid contributions from Court Line in debt; that such a claim would have to be made in the liquidation without any special priority based on a maritime lien;

and that it was in these circumstances unjust to allow the plaintiff, by pursuing a parallel claim for the same amounts as wages in Admiralty, to gain such special priority.

I must confess that I do not understand the legal basis of this argument. There is no reason, as a matter of law, why two different persons should not have concurrent rights of recovery, based on different causes of action, in respect of what is in substance the same debt. The court will not allow double recovery or, in a case of insolvency, double proof against the insolvent estate: *The Liverpool (No. 2)* [1963] P. 64. Subject to this, however, either of the two persons is entitled to enforce his right independently of the other.

I therefore reject this further argument against the plaintiff's claim.

The result is that the plaintiff is entitled to judgment against the first defendants, not only for the sum of £52·97 for employee's contributions, liability for which was admitted, but also for the further sum of £97·46 for employer's contributions, liability for which was denied. He is also entitled, as against both defendants, to a declaration that he has a maritime lien in respect of both these sums.

Order accordingly.

Solicitors: *Hill, Dickinson & Co.: Norton, Rose, Botterell & Roche.*

M. B. D.

[COURT OF APPEAL]

WESTON *v.* CENTRAL CRIMINAL COURT COURTS ADMINISTRATOR

1976 March 31, April 1, 2

Lord Denning M.R., Stephenson and Bridge L.JJ.

Contempt of Court—Solicitor—Discourtesy and breach of duty—Protest over premature listing of criminal trial—Client sent to court unrepresented—Offensive letters to court officer—Judge's direction that solicitor attend to explain conduct conveyed to solicitor by client—Solicitor not complying with direction—Whether contempt punishable by order to pay costs

Late on a Thursday afternoon a solicitor, who had been instructed by a client charged with a criminal offence and remanded on bail, learned that the case, which was not ready for trial, had been listed as a "floater" for the Friday. He telephoned the listing officer to say that he had understood it had been agreed that the case would not be put in the list so soon; but he was told that it was too late to take it out of the list. The solicitor that same evening wrote an offensive letter of protest to the courts administrator and on the Friday he sent the client to the court by himself. The presiding judge, with the letter of protest before him, fixed the trial for the following Monday. The solicitor was