LLOYD'S LIST LAW REPORTS

Reprinted (with additions) from
"LLOYD'S LIST and SHIPPING GAZETTE."

HILARY SITTINGS, 1927.

Edited by
J. A. EDWARDS and H. P. HENLEY,
of the Middle Temple, Barristers-at-Law.

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Edited by J. A. EDWARDS and H. P. HENLEY, of the Middle Temple, Barristers-at-Law.

VOL. 27. No. 1] THURSDAY, FEBRUARY 3, 1927. [BY SUBSCRIPTION

ADMIRALTY DIVISION.

Wednesday, July 21, 1926.

THE "JUPITER."

Before Mr. Justice HILL.

Ship—Possession—Title—Vessel originally the property of Russian steamship company, later vested in administrators appointed by French Court to preserve possession for true owners, handed over by captain to Russian Soviet representatives and then sold by them to defendants — Position of captain as bailee and as custodian considered — Right to sue—Declaration of ownership by foreign sovereign state — Effect of Soviet decrees on title of administrators —Onus of proof.

This was a claim for the possession of the steamship *Jupiter*. The plaintiffs were the Compagnie Russe de Navigation à Vapeur et de Commerce, and the defendants the Cantiere Olivo Soc. Anonima, of Genoa.

Plaintiffs asked for (1) a declaration pronouncing that they were the lawful owners of the ship and (2) possession. Defendants, on the other hand, denied that the plaintiffs were at any material time the owners of the ship. Further, they said that by a contract dated Sept. 18, 1924, the Arcos Steamship Company, Ltd., acting as agents for the Soviet Government of Russia, sold the *Jupiter* to them.

Mr. G. P. Langton, K.C., and Mr. K. S. Carpmael (instructed by Messrs. William A. Crump & Son) were for the plaintiffs; and Mr. C. R. Dunlop, K.C., Mr. H. C. S. Dumas and Mr. H. Murphy (instructed by Messrs Wynne-Baxter & Keeble) represented the defendants.

The plaintiffs' case was that they were the sole owners of the *Jupiter*, a steel screw steamship belonging to the port of Marseilles. Their head office was originally in Petrograd, and all their vessels were registered at Odessa. In or about November, 1917, the head office was transferred to Odessa, and at the beginning of 1919 was further transferred to Marseilles. The plaintiff company was at all material times administered under orders of the French Courts. They were in uninterrupted possession of the *Jupiter* from a date prior to 1917 until March, 1924.

The *Jupiter* was employed by the plaintiffs in trading until December, 1920, when she was laid up at Plymouth. On or about Sept. 29, 1922, the *Jupiter* was taken from Plymouth to Dartmouth, and since that time had been laid up at Dartmouth. While the ship was at the last-named port the master (Jacob Lapine), the chief officer and the chief engineer remained on board in the employment of the plaintiffs; and were paid wages. During March, 1924, Jacob Lapine wrongfully and without the knowledge of the plaintiffs handed over the *Jupiter* and her papers to a representative of the Union of Socialist Soviet Republics, and refused thereafter to recognise the plaintiffs as owners of the ship.

In September, 1924, the Arcos Steamship Co., Ltd., purported to sell the *Jupiter* to the Cantiere Olivo Societa Anonima, who entered an appearance in the action as owners of the *Jupiter*. The defendants were now in possession of the ship and had refused to hand it over to the plaintiffs and had converted it to their own use. The defendants had given bail in the action for an amount equivalent to the value of the *Jupiter*.

The plaintiffs claim: a declaration pronouncing them to be the lawful owners of the ship; possession; alternatively judgment against the said bail for the value of the ship; condemnation of the defendants or their bail with the costs of the suit and the damages and expenses arising from the conversion and detention of the ship by them; and if necessary a reference to the Registrar assisted by merchants to assess the amount of such damages and expenses.

Defendants' case was a denial that the plaintiffs were the owners of the *Jupiter* and at the time of the institution of the action or at any subsequent time had any legal existence; that they were in no way entitled to sue; and further that the plaintiff company was not a corporate body according to the laws of any country, nor had it any recognised status. By a decree dated Jan. 26, 1918, for the nationalisation of the Russian mercantile marine, made by the Soviet Government—which government was recognised by his Majesty's Government as the *de facto* and *de jure* government of an independent foreign state—the *Jupiter*, which was registered at Odessa, became the property of the Soviet Government. Thereafter all rights *in rem* and maritime liens if any in respect of the ship, arising prior to the date at which the ship became the property of the Soviet Government, were extinguished, and no rights *in rem* and no maritime liens could or did attach or be attached to the *Jupiter* while so owned by the Soviet Government. By a decree of the Soviet Government dated Mar. 4, 1919, for the liquidation of state enterprises, the plaintiff company ceased to exist and no longer had any legal existence. The Soviet Government was recognised by the government of the French Republic as the *de facto* and *de jure* government of an independent foreign state, and by reason of that fact and by reason of the operation of the decrees of the Soviet Government the plaintiffs' branch office in France, if it ever existed, no longer had any legal existence. Further, the plaintiffs had ceased to have any legal existence or rights, and were not entitled to prosecute the present action.

By a contract dated Sept. 18, 1924, the Arcos Steamship Co., acting as agents for the Soviet Government, sold to the defendants the *Jupiter*. The Soviet Government sold the ship with a good title and free from all encumbrances, and to allow the action to proceed would be to implead indirectly a foreign independent sovereign state, and in derogation of the rights of property of such a state.

The plaintiffs in their reply denied that by the decree dated Jan. 26, 1918, the *Jupiter* became the property of the Soviet Republic. They denied, too, that by the decree of Mar. 4, 1919, the plaintiff company ceased to exist or that it had no longer any legal existence. They admitted that the Soviet Government was recognised by the French Government, but said that such recognition was not accorded to the Soviet Government at any date material to the action. They denied that the Soviet Government sold the *Jupiter* to the defendants with a good title or free from all encumbrances as alleged in the defence. As to the remaining allegation that to allow the action to proceed would be to implead indirectly a foreign independent sovereign state, and was derogative to the rights of property of such a state, plaintiffs said that this contention was raised on behalf of the defendants in a motion in the course of the action. The motion was heard finally before the Court of Appeal. The Court pronounced (21 Ll.L. Rep. 116) against the contention and defendants are estopped from setting it up.

Thursday, July 22, 1926.

Mr. E. IDELSON, an authority on Russian legal matters, stated that, according to Soviet law of to-day, a ship flying the flag of one of the republics of the Soviet union could only be sold abroad in one way, and that was in the presence of a consul of the Union of Soviet Republics. Any sale that was not carried out in this manner was void and invalid. The *Jupiter* was not described as a Russian ship, and he questioned the right of the Soviet Government to sell it or give instructions for it to be sold.

Mr. JOHN MACHOVER, a Ukrainian, and a member of the Russian Bar under the old régime, gave it as his opinion that the decree of the Soviet Government dated Mar. 4, 1919, for the liquidation of state enterprises, did not apply to shipping.

Friday, July 23, 1926.

Mr. DUNLOP, for the defendants, said that the Cantiere Olivo Soc. Anonima obtained a title from those in possession of the *Jupiter* when they purchased. That title should stand unless the other side came forward and proved they had a better title. The plaintiffs had not shown they were the owners of or had a possessory right to the ship, although the onus was upon them to do so. He submitted that there was no case against the defendants.

His LORDSHIP reserved his view on this submission, and decided to hear the evidence before expressing an opinion.

Tuesday, July 27, 1926.

General BOURGEOIS, formerly a general in the French Army, and the official administrator under the French Court of the plaintiff company at Marseilles, said that before the *Jupiter* passed into the hands of the Russians in March, 1924, he paid the wages of the crew. He first learned that the captain (Jacob Lapine) had handed the vessel over to the representatives of the Russian Soviet Republic when he was instructed to come to Paris and take instructions, and he refused to obey him.

In reply to Mr. Dunlop, General BOURGEOIS admitted that he had never seen the *Jupiter* or Captain Lapine.

Wednesday, July 28, 1926.

Evidence was called on behalf of the defendants.

The legality of the act of Arcos Steamship Co., Ltd., in selling the *Jupiter* on behalf of the Soviet Government of Russia to the defendants having been questioned, evidence was given by Russian subjects with reference to the decrees made by the Soviet with regard to the nationalisation of shipping. They stated that as the *Jupiter* was nationalised, with other ships, the Soviet were the owners, and their representatives were entitled to give instructions to sell.

Mr. SAMUEL DOBRIN, a Russian lawyer, stated that the law of the Soviet provided that transactions made abroad on behalf of Russia were decided according to the law of the Soviet, not according to the law of the country where the transactions were fulfilled. The decrees of the Russian Government related to all property of the Soviet inside and outside the country. Therefore vessels, including the *Jupiter*, which were nationalised, automatically became the property of the Soviet, no matter where they were at the time of the making of the decree.

Thursday, July 29, 1926.

The evidence having concluded, Mr. CARPMAEL submitted that despite the decrees of the Soviet Government, the old Russian company had not ceased to exist, but in fact was still existing. The captain of the *Jupiter*, who handed the vessel over to the representatives of the Soviet, was in the employ of the plaintiffs and received wages from them. Surely his act did not deprive the plaintiffs of their possessory title.

Friday, July 30, 1926.

Mr. DUNLOP, for the defendants, submitted that the plaintiffs had no cause of action and no right to the possession of the *Jupiter* in October, 1924, or at any time. The vessel was in English waters after December, 1920. Counsel contended that the declaration that the Union of Socialist Soviet Republics were the owners was correct, and no Court could question the right of the Soviet to exercise their rights of ownership whether in law they were owners or not. The Italian purchasers therefore stood in the shoes of the Soviet Government.

Monday, Oct. 25, 1926.

Mr. DUNLOP submitted that the plaintiffs, the Russian company, had no legal existence at the time the writ was issued, because of the decrees of the Soviet Government, and therefore the action could not be maintained.

Tuesday, Oct 26, 1926.

His LORDSHIP reserved judgment.

Friday, Jan. 14, 1927.

JUDGMENT.

Mr. Justice HILL, in giving judgment, said: In this action the plaintiffs claim possession of the steamship *Jupiter*. The ship at the date of the writ and arrest was lying at Dartmouth. The writ was originally issued in the name of the Compagnie Russe de Navigation à Vapeur et de Commerce, which was stated in the writ to be a corporate body according to the laws of France with their head office at 255, Rue St. Honore, Paris. By subsequent amendments, three persons were added as plaintiffs, M. Bourgeois, Mr. Tcheloff and Mr. Margoline, who were expressed to be suing on behalf of themselves and others trading as the Compagnie Russe de Navigation à Vapeur et de Commerce. Appearance was entered by an Italian company—Cantiere Olivo Societa Anonima. The defence has been conducted in the name of that company by representatives of the Union of Socialist Soviet Republics, commonly known and hereinafter referred to as the U.S.S.R.

Three main questions have to be determined. First, whether the plaintiffs or any of them have given any authority to sue. Secondly, whether the plaintiffs or any of them had and have any such title to or interest in the ship as to give them the right to maintain an action of possession. The burden of those two issues is upon the plaintiffs. The burden of the third issue is upon the defendants. It is this. Assuming that any of the plaintiffs would otherwise have had any such title or interest, whether its acquisition has not been prevented or its enjoyment destroyed by a change in the property in the ship by virtue of governmental acts of the U.S.S.R. or its predecessors in sovereignty, the Italian company resting its right upon a transfer from the U.S.S.R. as owners and alleging that the *Jupiter* had become the property of the U.S.S.R.

The first question was raised upon a motion to set aside the writ and was referred by the Court of Appeal to this Court. Now that the facts have been ascer-

tained, it is clear that no retainer has been given by the first-named plaintiffs. There is no such corporate body according to the laws of France as the Compagnie Russe de Navigation à Vapeur et de Commerce. There is or was a corporate body of which the head office and seat of control were in Petrograd, under a style of which the French title is a translation, known for short as "Ropit." It never established a branch in France; see French Decree of Apr. 23, 1925. It was in controversy whether it is an existing corporation. If it is non-existing, it cannot sue. If it is existing it has given no authority to sue. The name of the Compagnie Russe de Navigation à Vapeur et de Commerce ought to be struck out of the writ as a separate plaintiff. A retainer by Messrs. Bourgeois, Tcheloff and Margoline was not disputed. Affidavits were filed by each of them. This disposes of the question referred to the Court by the Court of Appeal.

I now pass to the issues in the case and first as to the right of the remaining plaintiffs to sue either on their own account or in a representative capacity. So far as is necessary for this part of the case, the facts are as follows. In 1917 the *Jupiter* was one of a fleet of steamers owned by the Petrograd company, "Ropit." The ships were registered at Odessa and the management of them was entrusted to a managing director stationed at Odessa. In December, 1917, the *Jupiter* was at Odessa and was there also on Jan. 26, 1918, and Mar. 4, 1918, and remained there until Apr. 9, 1919. I am not quite sure that she was not there throughout all that period, but those are the specific dates mentioned in the evidence. I shall have later on to consider what was the political position of Odessa between November, 1917, and March, 1918. But for the present purpose it is enough to say that there was no settled form of government there at that time. From March, 1918, to October or November, 1918, Odessa was in the occupation of the Austrians. From October or November, 1918, to April, 1919, Odessa was in the occupation of the French together with General Denikin. On Apr. 9, 1919, the *Jupiter* went to Constantza and thence to the United Kingdom and thence to America. She was never again in a Russian port. Between Aug. 28, 1920, and Sept. 30, 1920, she was lying at Bordeaux. Except for this period she does not appear to have been in any French port. From Bordeaux she made a voyage to America and thence to the United Kingdom. She arrived in the United Kingdom in December, 1920, and was then laid up at Plymouth until September, 1922, and at Dartmouth from September, 1922, until March, 1924. On Feb. 1, 1924, his Majesty's Government recognised the U.S.S.R. as the *de jure* rulers of those territories of the old Russian Empire which acknowledged their authority. On Mar. 9, 1924, Jacob Lapine, who had been master of the *Jupiter* since Aug. 30, 1920, handed the ship's papers to representatives in England of the U.S.S.R., and the U.S.S.R. took actual possession of the ship. Then followed a writ *in rem* for possession, which was set aside on the ground that it impleaded the U.S.S.R. The proceedings on that writ are reported in [1924] P. 236.* The *Jupiter* remained in the actual possession of the U.S.S.R., and in September, 1924, a contract of sale of the ship was entered into between the Arcos Steamship Co., Ltd., and the Cantiere Olivo Societa Anonima. The Arcos Steamship Co. was acting on behalf of the U.S.S.R. By this contract the Arcos Steamship Co. guaranteed the buyers against claims by third parties. Actual possession was transferred to the buyers. On Oct. 8, 1924, while the *Jupiter* still lay at Dartmouth, a claim for the return of the ship was made by the plaintiffs to the Cantiere Olivo Societa Anonima and was refused. The writ in the present action was issued on the same day.

When the *Jupiter* left Odessa in April, 1919, a number of other ships which formed part of the "Ropit" fleet left at the same time. A number of them proceeded to France. By the summer of 1920 some persons were carrying on business in France under the style of "Ropit" or of its French equivalent—the Cie. Russe de Navigation à Vapeur et de Commerce. They were managing from an office in Marseilles the "Ropit" ships which had left Odessa. I was given no precise information as to who these persons were. It would appear from the decrees of the French Courts that they included some who were shareholders in the Petrograd company, and the names of a few such shareholders were given by Mr. Bourgeois in his evidence. It would also appear from the decrees that Admiral Kanine was taking an active part in the management. According to the evidence of Mr. Kriloff, Admiral Kanine had been a director of the Petrograd company. Mr. Alexieff in his evidence spoke of the management of the ships being in Admiral Kanine under authority of Mr. Lefter, who had been managing director at Odessa of the Petrograd company and who at about this time appears to have been carrying on business in the name of "Ropit" at Sebastopol, then in occupation of General Wrangel. The French decree of Dec. 3, 1920, throws doubt upon the authority of Admiral Kanine as derived from Mr. Lefter. All I can say is that there were in France a number of persons actually carrying on business under the name of the company and actually managing the ships. The managing office was at Marseilles. There was also an office at Paris, which I gather was the head office. These persons had no communication with Petrograd and did not act under any orders from anyone in Petrograd. Nor did they recognise the authority of the Soviet Republics.

Mr. Jacob Lapine was appointed master of the *Jupiter* on Aug. 30, 1920. He had been in the services of "Ropit" for

* 19 Ll.L.Rep. 325.

26 years. He had left Odessa in another "Ropit" ship, the *Possadinky*, and the French decree of June 8, 1920, shows that he was still master of that ship as late as June 8, 1920. It was not in so many words stated in evidence by whom he was appointed to the *Jupiter*; and it is rather unfortunate that, instead of the master being called before me on the trial of this case, use was made of his affidavit. There was cross-examination upon the original motion in the first application—a cross-examination, of course, which was not directed to many of the points which called for elucidation when it came to the final trial of the case, but I must make the best of the material I have got from him. He said that at Marseilles he was ordered to take over the command. Mr. Alexieff, who was appointed chief engineer of the *Jupiter* in September, 1920, said that he was appointed by the Marseilles office of "Ropit." Mr. Lapine said that he was paid by the Direction in Paris. A number of his receipts were put in, dating from May, 1921, to March, 1924. They relate to payments for wages, food allowances and other laying up charges. They read: "Received from the Marseilles office of the Russian Steam Navigation & Trading Company." I do not know whether they were copies or originals, as they were receipts given to a firm of agents in England.

Mr. DUNLOP: My friend reminds me the originals were here in Russian and I think we gave your Lordship the translations.

Mr. Justice HILL: Then the receipts from the Marseilles office of the Russian Steam Navigation & Trading Company are a translation. On May 13, 1923, he signed an agreement adopting an agreement concluded in Marseilles on Mar. 1, 1922, and expressed to be "between the board of Ropit' and the staff of the steamers." All I can definitely say is that Mr. Lapine was appointed master of the *Jupiter* by persons carrying on business in France under the style of "Ropit" or its French equivalent, and until March, 1924, he was paid by and acted under the orders of these persons or of persons in France appointed under the French decrees to be presently mentioned. This at any rate is clear, that he was not appointed by the Petrograd office of "Ropit" or by anyone having the authority of the Petrograd company, if the Petrograd company still existed in 1920, nor was his appointment ever ratified and adopted by the Petrograd company. It is also clear that until the U.S.S.R. took possession in March, 1924, Mr. Lapine was in no sense the servant of the U.S.S.R.; he was not appointed or paid or controlled by it.

It is in my opinion important to understand the position of Mr. Lapine. One point made for the defendants was that the person in possession of the *Jupiter* in March, 1924, was Captain Lapine. This was put in different ways. One suggestion was that, having been appointed master by the Petrograd company and being unable to communicate with his principals, he possessed as *negotiorum gestor* of the Petrograd company. This suggestion falls to the ground when it is found that he never was appointed to the *Jupiter* by the Petrograd company. Another suggestion was that at common law the master of a ship has possession of it, as a bailee. Mr. Dunlop cited Moore v. Robinson, 2 B. & Ad. 817, which accepted and applied Pitts v. Gaince, 1 Salk. 10. But at the present day it is, in my opinion, impossible to regard the master as the bailee of a ship. In former days when the master on a foreign voyage passed altogether beyond the control of the owners and perhaps sold the outward cargo and bought a homeward cargo on owners' account, it might be possible to regard him as bailee of ship and cargo. Similarly, in the 17th century the master seems to have been treated as the employer of the crew and responsible for the wages of the crew and to have been responsible for their negligence. (See Marsden, 6th Ed. p. 63, note (e).) But to the conditions of modern commerce these considerations are quite inapplicable. The point is discussed by Pollock & Wright on Possession at pp. 60 and 138-9. After stating the rule that where an owner delivers a thing to a servant to be by him kept, used, carried or applied in the course of his employment as a servant, the master's possession continues, they add that

> it may be that it will sometimes as against strangers be treated as a possession in cases where the servant's charge is to be executed at a distance from the master and where the manner of the execution is necessarily left in a great degree to the discretion of the servant.

In my judgment, Captain Lapine never was in possession of the *Jupiter*, nor had he at any time the right to possession. He was a custodian merely. The person for whom he was custodian was in actual possession. And the question is, for whom was Captain Lapine custodian?

This brings me to the decrees of the French Tribunals. It is by virtue of these decrees that Messrs. Bourgeois, Tcheloff and Margoline contend that they had actual possession and the right to possession of the *Jupiter* in March, 1924, when, as they say, their servant, the master, wrongfully allowed the representatives of the U.S.S.R. to take possession. Mr. Lapine, as I have said, became master of the *Jupiter* on Aug. 30, 1920. Four days later, on Sept. 3, 1920, upon his application, the Commercial Tribunal of Marseilles appointed Maitre Pelen "provisional administrator with power and mandate to watch over the interests of the Compagnie Russe de Navigation à Vapeur et de Commerce in the exploitation of the *Jupiter*." The *Jupiter* at the time was at Bordeaux and not at Marseilles. Some question was raised before me as to the jurisdiction of the

Marseilles Court, but upon the evidence I am satisfied that the decree of the Marseilles Court would be recognised as binding in France. A similar order had been made on June 8, 1920, with regard to six other "Ropit" ships, including the *Possadinky* of which Mr. Lapine was then master, and it would appear from later decrees that similar orders were made with regard to other "Ropit" ships. There were a number of subsequent decrees, but the decree of Sept. 3, 1920, was the only one made while the *Jupiter* was in France.

The effect of these later decrees may be summarised as follows. I think it would be well to go through them, though it may be that the rights of the plaintiffs, if any, depend upon the decree of Sept. 3, 1920. On Oct. 3, 1920, Admiral Schramschenko and others, including Admiral Kanine, claiming to act in the name and on behalf of the Compagnie Russe de Navigation à Vapeur et de Commerce, moved to set aside the decrees obtained by the masters of thirteen ships (of which the *Jupiter* was not named as one), but the Court rejected the motion and confirmed Maitre Pelen as provisional administrator, and directed that he should consult with Admiral Kanine and if necessary form a shareholders' committee of inspection. On appeal, the Court of Appeal on June 20, 1921, confirmed this decree. On Aug. 9, 1921, on the motion of Messrs. John Cockerill, Ltd., as creditors of the Compagnie Russe de Navigation à Vapeur et de Commerce, the Commercial Tribunal of Marseilles extended the powers of Maître Pelen as administrator of the ships (including by name the *Jupiter*) and extended his administration to other property of the company outside Russian territory This decree was expressed to be made "in order to provide for the payment of the creditors of the company and the protection of the interests both of the navigating staff and the shareholders." On Aug. 12, 1921, the Commercial Tribunal of Marseilles by decree, reciting *inter alia* that the Tribunal had appointed Maître Pelen provisional administrator of the ships, appointed M. Jaujon administrator with Maitre Pelen. In his application Maître Pelen had included the *Jupiter* in the list of ships of which he was provisional administrator. On Sept. 23, 1921, there came before the Commercial Tribunal at Marseilles a number of applications to vary the decrees of Aug. 9, 1921, and Aug. 12, 1921. These applications were on the part (1) of the captains interested; (2) of Admiral Kanine; (3) of the members of the Committee of Inspection which it appears had been constituted on Jan. 28, 1921. Maître Pelen, M. Jaujon and Messrs. John Cockerill, Ltd., were also parties. The *Jupiter* is one of the ships enumerated in the judgment. A decree was made confirming Messrs. Pelen and Jaujon as "provisional administrators of the 'Ropit,' but to discontinue their functions on the reconstruction of the said company," but directing them to form a board of directors to take the place of the Committee of Inspection—the board to be composed of the two provisional administrators, one member to be chosen by the captains of the ships, and two members to be chosen by shareholders. The board was given the widest powers and especially those enumerated in the decree of Aug. 9, 1921, and one of the provisional administrators was to be a party to all financial engagements and important transactions. Then follow a group of decrees of June 13, 1922, Jan. 3, 1923, and Jan. 25, 1923, the effect of which is that a M. Batellet was directed to be substituted for Messrs. Pelen and Jaujon as provisional administrators. From these decrees it appears that Mr. Tcheloff had been appointed by the captains as a member of the board of directors and Messrs. Brodsky and Margoline had been appointed by the shareholders. The decree of Jan. 25, 1923, conferred on M. Batellet all the powers conferred on Maître Pelen by the decree of Aug. 9, 1921, and did away with the board of directors.

From the recitals of the next decree it appears that in fact M. Batellet never acted and that Messrs. Pelen and Jaujon continued to act as provisional administrators, and that Messrs. Tcheloff, Brodsky and Margoline were anxious to continue as members of a board of directors. The decree is dated Apr. 10, 1923. It appoints M. Bourgeois provisional administrator in place of M. Batellet of the property situated outside Russian territory of "Ropit," and declares that the board of directors, consisting of the provisional administrator and of the Russian members appointed either by the shareholders or by the captains, shall have the fullest powers as regards the management of the affairs of the company and in particular those referred to in the judgment of Aug. 9, 1921, but the provisional administrator is to be a party to all financial engagements and important transactions. This is the last of the decrees before March, 1924. It is, however, necessary to add that on Apr. 23, 1925, the U.S.S.R. applied to the Commercial Tribunal at Marseilles to cancel the decree of Apr. 10, 1923, and to allow the U.S.S.R. to retake possession of the vessels of "Ropit." This was refused, and the refusal was confirmed by the Court of Appeal on Dec. 23, 1925. I mention this decree because the recital states that the provisional administration was for the purposes of attending to the interests of the shareholders of "Ropit," the members of her crews, and to safeguard the interests of creditors until it was possible for the legal owners of the property of "Ropit" to re-enter into possession of their property. I should add that M. Bourgeois was still provisional administrator in March, 1924, and so continues. Of the three elected directors, Mr. Brodsky is dead. But Mr. Tcheloff and Mr. Margoline were directors in March, 1924, and so continue. M. Bourgeois gave evidence before me. He said that he administered the *Jupiter* as he did the other ships; he paid the wages, &c.; he rendered his accounts annually to

the Court. It appears from the decrees themselves that the provisional administrator was accountable to the Court.

What is the effect of the decrees as to the possession of the *Jupiter*? On this point I had the benefit of the evidence of French advocates. M. Allenes, called by plaintiffs, had no doubt that a provisional administrator has legal possession of property which he has to administer. He said that the decree of Sept. 3, 1920, gave the administrator legal possession of the *Jupiter*. He said that the later decrees had the same effect. But these were made at a time when the *Jupiter* was not in France. The decree of Sept. 3, 1920, was made while the *Jupiter* was in France. There may be difficulties in this Court recognising a right to possession given by a French Court to a ship which was neither French nor in French territory, and which never after the right was conferred came within French territory. But no such difficulty arises as to a decree made while the ship was in the jurisdiction of the Court which made it. If M. Allenes' view of French law is right, the decree of Sept. 3, 1920, gave Maître Pelen the legal possession, the right to possession, of the *Jupiter*. M. Duhamel, called by the defendants, did not contradict this evidence of M. Allenes. He said that the decrees did not pass the property to the administrator. No one had suggested that they did. Indeed, the decrees all proceed upon the assumption that the original company was still existing and the property in it, and they provide for administration until the legal owners re-enter into possession. Apart from the evidence of the French lawyers, I should be of opinion that the effect of the decree of Sept. 3, 1920, was to give the appointed administrator the right to possession of that which he was to administer, namely, the ship. I know not how else he was to administer it. I infer from the decrees that there was some controversy between the masters of the ships and the persons carrying on the business in France, and that the administrator was at first appointed to prevent those persons dealing with the ships as they chose. Afterwards the interest of creditors and shareholders was considered, and the conflicting claims of the masters and the shareholders were met by entitling each to appoint directors to assist the administrator. But throughout the administrator was maintained under appointment by the Court and answerable to it, and all attempts to get rid of a judicial administration of the ships were rejected by the Court. I hold that the decree of Sept. 3, 1920, gave to Maître Pelen the right to possession of the *Jupiter*, and that this was a possession on his own account and not as agent for the Petrograd company or anyone else. It was a possession under the Court. The administrator was appointed by the Court, could only be discharged by the Court, rendered accounts to the Court and was answerable to the Court for his administration. His possession was none the less his own possession because it was for the purpose of preserving the ship for the true owners. Maître Pelen continued to be sole administrator until Aug. 12, 1921. From that date to the appointment of M. Bourgeois on Apr. 10, 1923, he and M. Jaujon were co-administrators. This covers the period of the *Jupiter's* voyage from Bordeaux to America and thence to the United Kingdom, her laying up at Plymouth, her transfer to Dartmouth, and part of the time she lay there. For the rest of the time at Dartmouth up to March, 1924, M. Bourgeois was administrator.

If I must give effect to the decree of Sept. 3, 1920, I think I must equally give effect to the later decrees so far as they merely substitute one person for another as administrator. It seems to me that the jurisdiction of the French Court to make such substitutes does not depend on whether the *Jupiter* was or was not in France at the time they were made. If I am wrong in this, the difficulty would be removed by the addition of Maître Pelen as a plaintiff in the alternative. The legal position would in that case be this. Right to possession of Maître Pelen under the decree of Sept. 3, 1920, of ship in custody of those who at his request were appointed to exercise his rights, because the substitution is made at the instance of M. Pelen. The point is therefore one of form and not of substance.

The result is that I hold that M. Bourgeois was entitled to possession of the *Jupiter* in 1924. If so, it is not of much importance whether the right to possession belonged to M. Bourgeois only or to M. Bourgeois jointly with Messrs. Tcheloff and Margoline. The evidence of the French lawyer was not, I think, directed to this point. On the whole I have come to the conclusion, with some doubt, that the right of possession was in M. Bourgeois only. It follows that the custody of Captain Lapine was for M. Bourgeois, as it had previously been for Maître Pelen. Captain Lapine was under the orders of and paid by the administrator for the time being and was custodian of the ship for him. He was the servant of the administrator. Whom else could he have sued for his wages; who else could have dismissed him? If he had incurred liabilities for necessaries on account of the ship, who else but the administrator would have been liable *in personam*? If all this that I have just now said does not apply to the administrator alone, it applies to the administrator together with the other members of the board, namely, Messrs. Tcheloff and Margoline. But, as I have said, I think it is the administrator alone. The practical effect is just the same in my view, whatever the rights were of M. Bourgeois alone or of Messrs. Bourgeois, Tcheloff and Margoline; it is a mere question of who recovers the judgment. It is quite enough for the plaintiffs if one recovers, or if all three, if they are entitled to recover.

The result of these considerations is that in March, 1924, when Mr. Lapine allowed

the U.S.S.R. to take possession of the ship, M. Bourgeois was in actual possession and had the right to possession. Mr. Lapine may have acted as a loyal subject of the U.S.S.R., but he betrayed his trust to his employers. *Prima facie* the act of Mr. Lapine was wrongful. *Prima facie* M. Bourgeois, who had possession in fact and law, was wrongfully deprived of possession in fact. *Prima facie* M. Bourgeois is entitled to recover possession. His right does not depend merely upon a right to sue given by the French decrees. It depends upon possession and right to possession in England and wrongful dispossession in England, and the ship is under the arrest of this Court. Once this fact—possession and right to possession in this country—is grasped, a good deal of the argument as to the right to sue, based upon a consideration of the cases of the Russian Commercial & Industrial Bank v. Comptoir d'Escompte de Mulhouse, [1925] A.C. 112, 19 Ll.L.Rep. 312; of the Banque Internationale de Commerce de Petrograd v. Goukassow, [1925] A.C. 150, 26 Ll.L.Rep. 1; and of Sedgwick, Collins & Co. v. Rossia Insurance Company, 25 Ll.L.Rep. 453, is not material. If M. Bourgeois had possession and the right to possession here and was dispossessed here, there can be no question as to his right to sue here. Judgment must be pronounced in his favour unless the Cantiere Olivo Societa Anonima can show that the U.S.S.R., who sold the ship to them, had a superior title. It is upon the title of the U.S.S.R. that the Cantiere depend. It is not said that the Petrograd company is still the owner of the *Jupiter*, or that it, as owner, has a superior title to the possessory title of M. Bourgeois, or that the condition of the French decrees, the re-entry of the Petrograd company into possession, has been fulfilled. The defendants' case is that before March, 1924, the Petrograd company had ceased to exist, and that all its property, including the *Jupiter*, had passed to the U.S.S.R.

Before I deal with that part of the case, it will be well to dispose of the suggestion that, apart from a right by virtue of the French decrees, Messrs. Bourgeois, Tcheloff and Margoline are in some way entitled to sue in a representative capacity. I am unable to find any facts on which such a claim can be based. Before I can recognise such a claim, I must know whom they represent and find that the persons they represent were entitled to possession of the *Jupiter*. But the evidence leaves me very much in the dark. I know that there were some shareholders of the Petrograd company in France, but have no satisfactory evidence as to who they were; and I have nothing upon which I can find that they had or were entitled to possession. Indeed, the main contention of the plaintiffs, possession by the administrator, is inconsistent with possession in other persons. The decrees themselves show that the possession by the administrator was adverse to a possession by the persons in France, whether shareholders or others, who, before the appointment of an administrator, were managing the ships in France.

I now come to the question whether a title superior to that of the administrator has been established. The Cantiere Olivo Societa Anonima set up a superior title derived from the U.S.S.R. as owners. Strictly, the transfer to the Cantiere was not proved—for the contract of sale contemplated a bill of sale, and the bill of sale was not produced. It was said that it was with the authorities in Italy and could not be produced. But no certified copy was produced. The point, however, is not material. In any case the Cantiere Olivo have to establish the right of the U.S.S.R., and are entitled to rely on the right of the U.S.S.R. from whom they derive possession, and upon whose title and by whose authority they are defending—see Biddle v. Bond, 6 B. & S. 225, and Rogers v. Lambert, [1891] 1 Q.B. 318, at p. 325. This consideration makes it unnecessary to examine matters to which much evidence was directed, namely, the form of the authority of the Arcos Steamship Company to sell, and the form of sale required by Russian law. What is pleaded is that by virtue of a decree of the Soviet Government of Jan. 26, 1918, the *Jupiter* became the property of the Soviet Government, and that by virtue of a decree of Mar. 4, 1919, the Petrograd company ceased to exist. Evidence was given on the one side and the other by a number of Russian gentlemen, some of them lawyers, upon matters of law and upon the constitutional history of Russia since 1917; there was also evidence as to what was done in the carrying out of the decrees. My difficulty in dealing with this conflicting evidence upon matters which are in themselves obscure, is increased by the fact that these witnesses were not even agreed as to the correct translation of documents put in evidence.

But before I come to these witnesses, I have to consider the point made by Mr. Dunlop, which, if sound, concludes the matter, and relieves me from any further consideration of the evidence. It is therefore naturally a very tempting proposition. An affidavit by Mr. Christian Rakovsky, sworn on Nov. 25, 1924, was put in. He stated that he was Chargé d'Affaires for the U.S.S.R., and that at the time of the sale to the Cantiere Olivo Societa Anonima the U.S.S.R. was in possession of the *Jupiter*, was the owner and was entitled to the ownership of such vessel. Mr. Dunlop's contention is that that statement by the representative of the U.S.S.R. is conclusive as to the fact stated and must be accepted by this Court. This contention was before the Court of Appeal on the hearing of the motion to set aside the writ in this action, and was referred to by Atkin, L.J., [1925] P. at p. 78. What authority is there for the proposition that in the Courts of this country the declaration of a foreign sovereign is conclusive evidence that per-

sonal property in this country was or is the property of the foreign sovereign? I believe that that proposition holds good only in the case where the jurisdiction of the Court, or other jurisdiction of the Crown, is sought to be enforced against property, and in such cases is limited to the declaration that the property is the property of the foreign sovereign. It is involved in the principle that a foreign sovereign and his property are immune from the jurisdiction of the Crown, unless the foreign sovereign chooses to submit to it. Professor Dicey, in his Conflict of Laws, 3rd Ed., p. 217, after stating the rule as to the immunity of a foreign sovereign from the jurisdiction, says :—

> The immunity, moreover, applies to the property of the sovereign to the fullest extent provided that the property is shown to belong to the sovereign. . . .

But where jurisdiction is invited over property in this country, as, for instance, by a writ *in rem*, the declaration of a foreign sovereign that the property is his must be accepted, for to investigate the truth of that declaration would be to determine the very question of jurisdiction which is in issue, and to exercise jurisdiction over the foreign sovereign, which the Court cannot do against the will of such sovereign. I have always so understood and in many cases applied the judgment of Brett, L.J., in the *Parlement Belge*, 5 P.D. 197. But what authority is there for saying that where no question of immunity from jurisdiction is involved, the declaration of the foreign sovereign as to the ownership of property must be accepted? And on what principle can such a rule be based?

Let me, first of all, consider it on principle. Suppose the foreign sovereign did not claim immunity and submitted to the jurisdiction, and the question before the Court was whether the property was, or was not, in the foreign sovereign, must the declaration of the foreign sovereign be accepted as conclusive? If so, then the declaration of a foreign sovereign would have greater weight than a declaration made on behalf of the King. In a question between the Crown and a private person as to the property in chattels here, it surely would not be conclusive if a minister of state made oath that the property was in the Crown. *A fortiori*, is the declaration of a sovereign to be accepted as conclusive when a question as to property is litigated between private persons, and the evidence produced by one of them is a declaration by a sovereign that the property had been in it? Moreover, if the declarations of a sovereign as to the ownership of property, not made for the purpose of securing immunity from jurisdiction, are to be conclusive, there is no reason why the same force should not be given to all other declarations. Why call foreign lawyers to prove the fact or the effect of foreign law, if a simple declaration by the representative of the foreign sovereign would be conclusive? What was the necessity of Lord Brougham's Evidence Act, 14 and 15 Vict., cap. 99, Sect. 7, so far as foreign acts of state were concerned, if already such acts of state were conclusively provable by a declaration of the representative of the foreign sovereign? Even if the question in issue be the passing of property locally situate in a foreign country, is it clear that the declaration of the foreign sovereign is conclusive? Undoubtedly, property passes according to the law of the place where it is situate. But if it is said to have passed by an act of state of the foreign sovereign, is that not a fact which must be proved in the ordinary way by proof of the act of state, of its application to the property and of the local situation of the property? For instance, the property in a ship is said to have passed under a sale by a maritime Court following a judgment *in rem*. Must not the judgment be proved? I cannot believe that a declaration by the representative of the sovereign of the Court which condemned the ship must be accepted as conclusive proof. In every such case the question seems to me to be one of fact, to be determined by evidence. The act of state must be proved by lawyers, unless it can be proved as provided by Lord Brougham's Evidence Act. The meaning and the application of the act of state must also be proved by lawyers. The question whether the property or person alleged to be subject to the act of state was within the territory of the sovereign, where the act is in question, is equally a matter of fact to be proved by evidence. And on all three points it seems to me that the evidence of the representative of the sovereign carries no more weight than that of any other competent witness.

Mr. Dunlop relied upon what was said by Scrutton, L.J., in Luther v. Sagor, [1921] 3 K.B. 532, at p. 555. The decision in Sagor's case is not in point, for the decree of the Russian Socialist Federative Soviet Republic had admittedly and it was treated as having the effect of nationalising the goods in question, which at the time the decree was passed were admittedly within the territory of the R.S.F.S.R. The decision only applied the principle that the validity of the acts of an independent sovereign government in relation to property and persons within its jurisdiction cannot be questioned in the Courts of this country. At p. 555 Scrutton, L.J., points out that if the Russian Government had itself brought the goods into this country, and by its representative declared that they were the property of the Russian Government, the Courts here could not investigate the truth of the allegation. This I understand to refer to a claim against the Russian Government. It is a statement of the rule that the Russian Government is immune from the jurisdiction of our Courts. "It is impossible," he says, "to recognise a government, and yet claim to exercise jurisdiction over its person or property against its

will." He says further, and it is on this that Mr. Dunlop relies:—

> If it (the Court) could not question the title of the Government of Russia to goods brought by that Government to England, it cannot indirectly question it in the hands of a purchaser from that Government by denying that the Government could confer any good title to the property. This immunity follows from recognition as a sovereign state.

I am not sure that I follow the use of the word "immunity" in this connection. "Immunity," as I understand it, means "immunity from jurisdiction." But the words are spoken with reference to an admitted state of facts, namely, that the goods were in the territory of the Russian Government, and while there became subject to an act of state of that Government, whereby they became the property of the Russian Government. In such a state of affairs our Courts could not deny that the Government could confer a good title to the property. It is governed by the general principle that "every sovereign state is bound to respect the independence of every other sovereign state, and the Courts of one country will not sit in judgment on the acts of another done within its own territory." In my opinion, nothing that was said in Sagor's case establishes Mr. Dunlop's proposition. In Vavasseur v. Krupp, 9 Ch. D. 351, the Court did not consider an argument directed to show that the shells were not the property of the foreign sovereign, and pronounced it to be fallacious; though, as the proceedings were really directed against the shells, and the representative of the foreign sovereign declared them to be his property, it would look as if the case might be within the principle of the *Parlement Belge*, to which I have already referred. Vavasseur v. Krupp was decided the year before the *Parlement Belge*. I hold that Mr. Rakovsky's declaration is not conclusive.

I must consider the evidence to see whether the *Jupiter* became the property of the U.S.S.R. or of any one of the Republics which together form the Union. The two which are material are the Russian Socialist Federative Soviet Republic—the R.S.F.S.R.—and the Ukrainian Socialist Soviet Republic, which I will refer to as the Ukrainian S.S.R. If I understand the defendants' case, it is put thus: firstly, that the decrees of the R.S.F.S.R., which were acts of state having legislative effect, made on Jan. 26, 1918, and Mar. 4, 1919, dissolved the Petrograd company and transferred all its property, including the *Jupiter*, wherever that property was situated, to the R.S.F.S.R. Secondly, if the decrees did not in themselves dissolve the company and transfer the property, they provided for the liquidation of the company and the transfer of the property wherever situated, and that long before March, 1924, the liquidation was completed and the transfer made. These two contentions are independent of the question whether the *Jupiter* ever was within the territorial sovereignty of the R.S.F.S.R. They are based upon the fact that the head office of the company was in Petrograd, which undoubtedly was within the territorial sovereignty of the R.S.F.S.R.

Thirdly, they say as an alternative that at the end of 1917 and the beginning of 1918 political power in Odessa was in the hands of Soviets there, and that they, acting as members of or recognising the sovereignty of the R.S.F.S.R., seized the ships and thereby made them the property of the R.S.F.S.R., or that their seizure, if made before the decree of Jan. 26, 1918, was nevertheless a seizure for the R.S.F.S.R., and that the decrees coupled with the seizure transferred the property to the R.S.F.S.R.

Fourthly, it is said as a further alternative that the Soviets at Odessa seized the ships as an independent sovereign, and that the Ukrainian S.S.R., which subsequently came into existence and exercised sovereignty in Odessa, is to be regarded as the successor of those who so exercised sovereignty in Odessa at the end of 1917 and the beginning of 1918.

These third and fourth contentions have regard to the fact that the *Jupiter* was at Odessa. In considering these, it is vital to remember that from March, 1918, to Apr. 9, 1919, though the *Jupiter* was at Odessa, yet Odessa was not territorially within the sovereignty of either the R.S.F.S.R. or the Ukrainian S.S.R. (which indeed had not come into existence) or of any persons to whom they can be regarded as successors in title, nor within the sovereignty of any persons who were of Bolshevist principles, or minded to confiscate private property. Whoever the persons were who seized the ships before March, 1918, they exercised no sort of political power in Odessa during the occupation of the Austrians and the French, except possibly for a few days in the autumn of 1918, between the Austrian and French occupations; and before the French left the *Jupiter* had already left Odessa and was never thereafter within the territory of either the R.S.F.S.R. or the Ukrainian S.S.R.

As to the first contention, it seems to me that the decrees as to shipping enterprises of Jan. 26, 1918, and Mar. 4, 1919, go no further than the decrees as to banking and insurance enterprises, which were considered by the House of Lords in the Mulhouse case, [1925] A.C. 112, as to banking, and the Rossia case, 25 Ll.L.Rep. 453, as to insurance. To adopt the words of the Lord Chancellor in the Rossia case, the decrees for nationalising shipping companies, which have been put in evidence, were at least not stronger than the decrees for nationalising banking and insurance companies. If so, they did not in themselves dissolve the Petrograd company, but merely at most provided for its liquidation. The question whether they nevertheless transferred at once the property of the company was the second question mentioned by the Lord

Chancellor in the Mulhouse case at p. 119:—

> Have they proved that the property in the bonds in dispute is no longer in the appellant company?

But the Lord Chancellor at p. 129 said that it was unnecessary to consider the question, for Counsel had deliberately refrained from arguing the question whether a Russian decree could confiscate foreign bonds which were in this country. Mr. Dunlop has not refrained from contending that the effect of the decrees was at once to transfer to the R.S.F.S.R. the property in the ships of the company, wherever situate.

Two questions are here involved: firstly, whether they at once transferred the property; and, secondly, whether they transferred the property, though it was not locally situate within the territory of the R.S.F.S.R. As to the first, it seems to me that if the decrees only provided for the liquidation of the company, they equally only provided for the ultimate transfer of the property upon the completion of the liquidation. I express this view with some hesitation, because I observe that in the Rossia case, 25 Ll.L. Rep. at p. 458, Lord Sumner treats the Mulhouse case as deciding that the decrees as to banking companies did not

> dissolve the companies themselves, but only stripped them of their assets and destroyed their goodwill by making banking a state monopoly . . .

If the view I have expressed is the true view of the decrees considered in themselves, I am quite unable to arrive at a contrary decision upon the most conflicting evidence called before me. It is for the defendants to satisfy me that the decrees were legislative acts, and that they had the effect alleged. They have wholly failed to do so.

As to the second question—that is the question whether the decrees when they operated, if they did not dissolve the company, provided for the liquidation of it and for the transfer of its property wherever situated—it was not suggested that ships were to be governed by any principles other than those applicable to other chattels. If the *Jupiter* was not within the territory of the R.S.F.S.R., I do not see how the mere passing of a decree could transfer the property. This seems to me to be recognised in all the cases: see, for instance, Atkin, L.J., in Goukassow's case, [1923] 2 K.B., at the bottom of p. 693, and Sargant, L.J., in the Rossia case in the Court of Appeal, [1926] 1 K.B. at p. 15, and the Lord Chancellor in the Rossia case in the House of Lords, 25 Ll.L.Rep. at p. 455. The Lord Chancellor treats it as obvious that the property and rights of a company in the countries foreign to Russia are not effectively taken from it by the Russian legislation. I am strengthened in this opinion by the view taken by the R.S.F.S.R. itself, as set forth in two circulars. The first, No. 42, is dated Apr. 12, 1922, and was addressed by the People's Commissariat for Foreign Affairs to the Plenipotentiary Representatives of the R.S.F.S.R. abroad. It sets forth that

> the régime of property rights established by decrees of the Russian Soviet Power regulates property relations on the territory of the R.S.F.S.R. only,

and continues:—

> But relations in connection with property rights where the objects thereof are outside the territory of the R.S.F.S.R., and are not connected with such territory, cannot be discussed outside the boundaries of the R.S.F.S.R. in accordance with Russian laws and are determined by local legislation without regard to the nationality of the subjects of such rights, even if such subjects were Russian citizens.

The second, No. 194, is a circular under date Sept. 26, 1923. It is issued by the People's Commissariat of Justice to all District Courts. It was issued after the union of the R.S.F.S.R. and the Ukrainian S.S.R. had been formed, but in terms applies only to citizens of the R.S.F.S.R. It states that

> property rights of citizens of the R.S.F.S.R. which have to be enforced outside the boundaries of the U.S.S.R. are to be determined by the laws of the country where such rights are to be enforced.

These circulars show that the R.S.F.S.R. recognise and enforce the general principle that the passing of chattels is governed by the law of the place where they are locally situate, and in particular they recognise that the nationalising decrees do not operate upon property outside the territory of the R.S.F.S.R.

It will be convenient to examine the question whether the *Jupiter* ever was within the territory of the R.S.F.S.R. when I consider Mr. Dunlop's third contention. But I may at once say that I find, for reasons to be stated presently, that it is not proved that the *Jupiter* ever was within the territory of the R.S.F.S.R.

As to the second contention, the view that the decrees could not transfer property which was not in the territory of the R.S.F.S.R. applies equally whether the liquidation was completed or not. Moreover, at the date of completion, if completion ever took place, the *Jupiter* certainly was not in territory of the R.S.F.S.R., even supposing that Odessa was in such territory, from November, 1917, to March, 1918. The liquidation is said to have been completed in December, 1918, at a time when Odessa, where the *Jupiter* lay, was in the occupation of the French and General Denikin. If it was completed by December, 1918, I am puzzled by the