

[Title]

Claim for Statutory Lien over Vessel

[Deciding Court]

Supreme Court

[Date of Decision]

27 March 1984

[Case No.]

Case No. 859 (o) of 1982

[Case Name]

Objection to Dividends

[Source]

*Hanrei Jiho* No. 1116: 133

[Party Names]

Final Appellant           X           The Okinawa Development Finance Corporation

Vs.

Final Appellee           Y           Prefecture of Okinawa Tuna Fishing Cooperative Association

[Summary of Facts]

This case concerned a voluntary auction of a deep sea fishing vessel, Vessel M, owned by Limited Partnership A. Fishing Cooperative Association Y had provided supplies including fuel oil and food for the vessel, and a dividend chart had been prepared with Y as a holder of a statutory lien over the vessel with respect to Y's claim for payment, in accordance with Article 842(6) of the *Commercial Code*. In response, a financial institution, Finance Corporation X, which held a shipping mortgage with respect to Vessel M, filed an objection in this suit, and asserted that Y's statutory lien should not be allowed. The lower case allowed Y's statutory lien. X filed a final appeal.

[Summary of Decision]

Final appeal dismissed.

“According to the facts lawfully established by the lower court, Vessel M was engaged in fishing for tuna for sashimi mostly in the Indian Ocean for approximately one year from the time of its departure from Japan until the time of her return to Japan. Vessel M preserved the tuna for sashimi she caught by freezing, and unloaded it upon returning to Japan. Vessel M was a deep sea fishing vessel in the class of approximately 300 tons, owned by non-party, Ookura Suisan Limited Partnership, and the entire voyage was carried out as a single voyage. It followed that Vessel M was a fishing vessel, and so did not make ‘voyages for commercial purposes’. It was clear, however, that Vessel M was ‘a vessel placed in service for navigation’. Accordingly, it was proper to interpret that, Article 842(6) in Part 4 (currently Part 3) of the *Commercial Code* applied *mutatis mutandis* under the provisions of Article 35 of the *Shipping Act*. Moreover, the

voyage to the deep sea after it departed Japan, the voyages back and forth between overseas bases and the fishing ground, and the voyage home after fishing to bring the catch back to Japan were all voyages for the purpose of deep sea tuna fishing, and there were no substantial differences between them. There was therefore no reason to interpret, as argued, that the voyage home after fishing to bring the catch back to Japan was the only voyage to which the Item (6) described above applied. It was proper to interpret that the voyage after it departed a Japanese port until it returned to a Japanese port, including the voyages while it engaged in fishing in the meantime, fell under the voyages to which the provisions described above applied.”

“In light of the modern development of systems of communications, money transfers, and agency, a Master is able to receive supplies, including fuel oil and food, for a vessel during a voyage, by entering into a contract with merchants in foreign countries or Japan, with the owner of the vessel arranging for payment methods upon receiving communications from the Master, without the Master having to enter into contracts directly with merchants in foreign countries to receive supplies, including fuel oil and food. These contracts that the owner of the vessel enters into do not differ from ordinary contracts on land. Therefore, to that extent, it can be said that these days, the need to protect obligors by acknowledging statutory liens over vessels for obligations prescribed in Article 842(6) of the *Commercial Code* is diminished. Moreover, statutory liens over vessels have priority over shipping mortgages, with no requirement of public notice (Article 849 of the *Commercial Code*). It follows that broad recognition of statutory liens over vessels is prejudicial to the interests of vessel mortgagees, and ultimately, makes it difficult for vessel owners to obtain finance. This is an international issue, as observed from the conclusion of an international convention limiting the situations where statutory liens over vessels are recognized. Although Japan has not ratified the convention, this matter should be carefully considered when interpreting the provisions in the *Commercial Code* with respect to statutory lien. Accordingly, in light of these various points of view, a strict interpretation should be taken of the scope of claims that are recognized as statutory liens over vessels. Needless to say, however, we are not allowed to ignore these provisions in our interpretation, so long as we have these provisions in the *Commercial Code* described above. Moreover, the reasons why the claims prescribed in Article 842(6) in the *Commercial Code* are given statutory liens are that supplies, including fuel oil or food, which give rise to the claims described above, help maintain or preserve the vessel, and the vessel comprises the security for all of the creditors of vessel’s owner. Therefore, the mere fact that a claim arose for the joint benefit of all obligees as against the owner of the vessel does not mean that the claim did not fall under the provisions described above. Consequently, the decision by the lower court that the claim that arose as a result of a Japanese vessel receiving supplies, including fuel oil and food during its voyage in accordance with a contract that the owner of the vessel entered into in Japan, as in this case, was a secured claim with a statutory lien over the vessel under Article 842(6) of the *Commercial Code*, and that, as described above, the entire voyage from the time Vessel M departed Japan until it again arrived in Japan constituted the voyage to which the provisions described above would be applicable, was not mistaken, as argued, in interpreting the provisions of the *Commercial Code* described above.”