

## THE SHANTHA ROHAN

COURT OF APPEAL.

DR. A. DE Z. GUNAWARDENE, J. AND

ISMAIL, J.

C.A /LA 103/84/LG

H.C. COLOMBO ACTION IN REM NO. 18/83,

JANUARY 11, 16, 21 AND 22, 1991.

*Admiralty Law – Admiralty jurisdiction – Claim for damage to cargo – Legality of writ of summons and arrest of vessel – Was there a law in force providing for the exercise of admiralty jurisdiction until 01.11.1983 when Admiralty Jurisdiction Act, No. 40 of 1983 came into force?*

**Held:**

The term jurisdiction does not connote the form or manner in which the act is to be done, but relates to the power, scope and the ambit of authority.

The expression jurisdiction means also the power to hear and determine the matters litigated.

The admiralty jurisdiction developed independently and had its own rights and remedies in an area defined by content. District admiralty jurisdiction cannot be said to have been introduced into our country by the Civil Law Ordinance.

The Civil Law Ordinance did not operate at any time as the instrument which enabled the current inherent and statutory admiralty jurisdiction of England to be invoked and made applicable as the admiralty jurisdiction to be exercised by our courts.

Section 62 of the Judicature Act expressly and effectively repealed Chapter 1 of the Administration of Justice Law, No. 44 of 1973 which included section 54, the provision which related to exercise of admiralty jurisdiction.

Though section 13(2) of the Judicature Act envisaged that the admiralty jurisdiction of the High Court shall be as provided for in the law for the time being in force, the admiralty jurisdiction vested in the High Court by the Judicature Act, No. 2 of 1978 could not have been legally exercised after 02.07.79 as there was no law in force which provided for it until 01.11.83, when the Admiralty Jurisdiction Act, No. 40 of 1983 relating to the exercise of admiralty jurisdiction was brought into operation.

Hence the writ of summons and arrest of the vessel *Shantha Rohan* were illegal.

#### Cases referred to :

1. *The Yuri Muru - The Woron* 1927 AC 906, 912, 915
2. *Arumukham v. The British India Steam Navigation Company* (1878) 1 NLR 61
3. *The Sansone* (1890) 1 SCC 69
4. *The Sansone* (No. 2) (1890) 9 SCC 75
5. *Attorney-General (on the relation of Bedfordshire County Council) v. Trustees of the Howald United Reformed Church, Bedford* (1975) 2 All ER 337, 345 (HL)
6. *The Government of the United States of America v. The Ship "Valiant Enterprise"* (1961) 63 NLR 337, 343
7. *Cargo and Tankship Management Corporation and Another v. The Ship "Valiant Enterprise"* (1961) 64 NLR 271
8. *Hertfordshire County Council v. Barnet Rural Council* (1902) 2-KB 48

APPEAL from the High Court of Colombo in purported exercise of admiralty jurisdiction.

*J. W. Subasinghe, P.C.* with *Romesh de Silva P.C.* and *D. J.C. Nilanduwa* for petitioner-appellant

*G. F. Sethukavalar, P.C.* with *Mano Devasagayam* and *Shammil Perera* for respondent.

March 01, 1991.

**ISMAIL, J.**

This appeal relates to the question whether there was a substantive law which enabled the High Court of Colombo to exercise admiralty jurisdiction consequent upon the repeal of chapter I of the Administration of Justice Law, No. 44 of 1973 by section 62 of the Judicature Act, No. 2 of 1978 until the passing of the Admiralty Jurisdiction Act, No. 40 of 1983.

The plaintiff-respondent P. B. Umbichy Ltd. filed an action *in rem* in the High Court of Colombo, against the vessel m.v. "Shantha Rohan", then lying in the port, claiming a sum of Rs. 2,078,725/- as loss and damage suffered by it by reason of damage to 6050 bags of sugar out of the entirety of the cargo consigned for delivery to it.

On 1 September '83, the writ of summons obtained on the application made by the plaintiff-respondent was duly served and the vessel m.v. "Shantha Rohan" was placed under arrest on a warrant issued by the High Court of Colombo sitting in the exercise of its Admiralty Jurisdiction.

Hede Navigation (Pte) Ltd. as the owner of the said vessel then sought to impugn the validity of the order issuing the writ of summons and the warrant of arrest, contending that the arrest of the vessel was illegal and that there was no substantive law which provided for the exercise of the admiralty jurisdiction vested in the High Court as at the date of the institution of this action and as at the date of making the said order.

On 13 September '83 the vessel with its cargo was released from arrest on a bank guarantee being furnished to the value of US\$ 85,369 equivalent to Rs. 2,078,725/-.

The legality of the aforesaid order was the subject-matter of a protracted inquiry, at the end of which, the learned High Court Judge held for the reasons set out by him in his order dated 30 August '84, that there was a substantive law operative which enabled the High Court to exercise its admiralty jurisdiction at the time material to this action. He also held that it was the law that prevailed for the time being of the High Court of England which was then consolidated in the Administration of Justice Act, 1956.

The petitioner-appellant seeks to have this order set aside in this appeal on the ground that it is contrary to law and is a nullity, as the High Court did not have the power, jurisdiction or authority as on 1st September '83 to issue a writ of summons and a warrant of arrest and further, as averred in its petition that the learned judge had misdirected himself in taking the view,

- a) that the legislature in enacting section 54 of the Administration of Justice Law No: 44 of 1973, was aware that the law which prevailed in admiralty jurisdiction was the law for the time being of the High Court of England;
- b) that the repeal of section 54 has not repealed the substantive law of admiralty jurisdiction that prevailed in Sri Lanka.
- c) that the Admiralty Jurisdiction Act, No: 40 of 1983, was drafted on the premise that a substantive law existed; and
- d) that the law that prevailed at the time material to this action was the law relating to admiralty jurisdiction for the time being of the High Court of England, which was at this time consolidated in the Administration of Justice Act, 1956.

Learned Counsel for the appellant seeking to deal with the impact of the Administration of Justice Law, No.44 of 1973, on the development of admiralty jurisdiction in this country traced the origin of the Vice Admiralty Courts under the British rule constituted under commission of the High Admiral or Lords Commissioners of Admiralty. The jurisdiction then exercised by the Vice Admiralty Courts was commonly that of the High Court of Admiralty in England. It appears that the Vice Admiralty Court was in existence in 1815 with the Chief Justice, Sir Alexander Johnston as the Judge. (The Ceylon Calendar, 1815-page 42)

The Crown had at first legislated directly by Charters of Justice, the first of which was dated 18th April 1801, followed by the Charter of 6th August 1810, then by the Charter of 30th October 1811, and next by the Charter of Justice of 18th February 1833. Article 4 of the Charter of Justice 1833 provided for the issue of Commissions by

the Lord High Admiral or the Commissioners of England to the Supreme Court of Ceylon for the exercise of admiralty jurisdiction.

Sir Henry Jenkyns (Jenkyns, *British Rule and Jurisdiction beyond the Seas* p. 33) quoted in 1927, AC 906 at 912<sup>(1)</sup>, has observed, "In practice a judge of the Superior Court of the possession was always made judge of the Vice Admiralty Court, but he held that office by virtue of an appointment from the British Admiralty and not by his position as judge of the possession. His jurisdiction was vested in him personally and not in the Colonial Court."

Learned Counsel next referred to the Vice Admiralty Courts Act, 1863 – 26 Vict. C. 24 the Schedule to which includes Ceylon as a British possession in which there was an existing Vice Admiralty Court. This was an Act to facilitate the appointment of Vice Admirals and of Officers in Vice Admiralty Courts and to extend the jurisdiction and amend the practice of these Courts. The scope and extent of its jurisdiction were set out in section 10 and it specified "the matters in respect of which the Vice Admiralty Courts shall have jurisdiction". It set out eleven categories of claims in respect of which the Vice Admiralty Courts had jurisdiction.

Section 14 of the Vice Admiralty Courts Act, 1863, enabled rules "touching the practice to be observed in the Vice Admiralty Courts" to be established by Orders in Council. The Rules were established twenty years later by an Order in Council dated 23rd August 1883 and these Rules were published in Government Gazette No. 4559 of 7th December 1883, and are now reproduced in Vol. 1 Cap. 9 Legislative Enactments of Ceylon (Subsidiary Legislation).

The historical significance of these Rules was explained by Counsel in that originally in England at common law all actions were by way of proceedings *in personam*, and that the Admiralty Court succeeded in establishing a right to arrest property which was the subject-matter of a dispute and to enforce its judgments against the property so arrested, on the theory that a maritime lien attached to the property to the extent of the claim. Such an action became known as an action *in rem*. The Admiralty Court Acts 1840 and 1861

introduced into English Law the statutory right to arrest, originally conferring it upon claimants in respect of necessary materials supplied or services such as towage rendered to foreign vessels. The *in rem* jurisdiction was expanded in 1873-75 by the Supreme Court of Judicature Acts and the right was next consolidated by the Supreme Court of Judicature (Consolidation) Act 1925. This statute was replaced by the 1956 Administration of Justice Act, itself being now replaced by the Supreme Court Act 1981. However, the *in rem* jurisdiction was statutorily recognised for the first time in this country when the procedure for its institution was set out in the Rules made by Order in Council of 23rd August 1883.

Counsel next referred to the Civil Law Ordinance 1852 Vol. 3 Cap.79 (Legislative Enactments of Ceylon, 1956) which introduced the Law of England as the law to be administered in certain maritime matters. He submitted that this introduced the English mercantile and maritime law to be followed in the Civil Courts exercising civil jurisdiction in actions *in personam*. It did not envisage actions *in rem* and it did not introduce admiralty jurisdiction into the country. He referred to several reported cases of actions having been filed at about the same period in the District Courts, but submitted that though they related to maritime matters they were decided by the Courts in the exercise of its normal civil jurisdiction. He submitted that there was not a single case reported of actions relating to admiralty jurisdiction filed under the Civil Law Ordinance in the Vice Admiralty Court of Ceylon. He referred to a case decided in 1878 in the Vice Admiralty Court reported in (1878) 1 NLR 61<sup>(2)</sup>, but submitted that it related to a collision between two ships. He further submitted that no actions *in rem* appear to have been instituted in the Vice Admiralty Court until 1890. Two such cases have been reported in 9 SCC at pages 69<sup>(3)</sup> and 75<sup>(4)</sup>.

It was the further contention of Counsel that though the Civil Law Ordinance referred to various admiralty matters, it did not set out the substantive law of admiralty jurisdiction. He pointed out that the Vice Admiralty Court Act 1863 setting out the content of admiralty jurisdiction was made applicable in Ceylon despite the Civil Law Ordinance concerning maritime matters having been already

introduced in 1853. These two enactments dealt with unrelated matters governing different situations: His position was that since the Vice Admiralty Courts Act 1863 explicitly dealt with the scope and content of admiralty jurisdiction making provision for procedural rules and introducing *in rem* jurisdiction, the Civil Law Ordinance should now by implication be considered repealed so far as it relates to admiralty jurisdiction.

The Vice Admiralty Courts Act, 1863, 26 Vict. C. 24 was amended by the Vice Admiralty Courts Amendment Act 1867, 30 & 31 Vict. C. 45. The next stage in the development of admiralty jurisdiction was the advent of the Colonial Courts of Admiralty Act, 1890, 53 & 54 Vict. C. 27 which repealed the Vice Admiralty Courts Act 1863 and 1867, and abolished the system of Vice Admiralty Courts. This Act empowered the Colonial legislature to declare any court of unlimited civil jurisdiction, whether original or appellate, to be a Colonial Court of Admiralty and to provide for the exercise by such Court of its jurisdiction, and to confer upon any inferior or subordinate court a partial or limited admiralty jurisdiction. In pursuance of this authority our legislature enacted the Ceylon Courts of Admiralty Ordinance No: 2 of 1891, Vol. 1 – Cap 9. (Legislative Enactments of Ceylon, 1956) which declared the Supreme Court as the Colonial Court of Admiralty and conferred a limited admiralty jurisdiction to the District Court. Section 22 made provision for the making of rules and until then, Section 23 provided that the rules made under the Vice Admiralty Act, 1863, in force at the commencement of this Act shall have effect. The Supreme Court as the Colonial Court of Admiralty was under this Ordinance vested with the admiralty jurisdiction over the like places, persons, matters and things as the admiralty jurisdiction of the High Court in England and was empowered to exercise such jurisdiction in like manner and to as full an extent as the High Court in England.

The enactment next considered was the Administration of Justice Law No: 44 of 1973 which was brought into operation on 1st January 1974. It effected a far-reaching change in the meaning of "admiralty jurisdiction" as existing up to this date. According to section 54 the expression "admiralty jurisdiction" means, "until otherwise provided for by written law, the admiralty jurisdiction for the time being of the High Court of England"

It may be noted that no provision was made by "written law" during the period in which this section included in Chapter 1 of the Administration of Justice Law was in force.

Section 3(1) (a) repealed the Ceylon Court of Admiralty Ordinance and thus the Colonial Courts of Admiralty established under it was abolished.

The Administration of Justice Law further changed the structure of the Judicature and for the first time established several High Courts. Section 23 (1) laid down that the Minister may, by Order published in the Gazette, appoint any High Court to have admiralty jurisdiction and to assign to such Court as its zone, any one or more zones, for admiralty purposes. In this manner the Minister of Justice by Gazette No: 92/6 of 1.1.74 conferred admiralty jurisdiction on the High Court of Colombo.

Next the Constitution of 1978 by Article 105 (1) C created one High Court :- "The High Court of the Republic of Sri Lanka". The several High Courts established under the Administration of Justice Law No: 44 of 1973 were deemed for all purposes to constitute one single Court having jurisdiction throughout the Republic to be exercised in the several zones in accordance with the law for the time being in force.

In terms of the provisions of the 1978 Constitution, the Judicature Act No. 2 of 1978 which came into operation on 2.7.79, provided for the establishment and constitution of a new system of courts. Section 13 (1) vested admiralty jurisdiction in the High Court ordinarily to be exercised by the Judge of the High Court sitting in the judicial zone of Colombo.

However, section 54 of the Administration of Justice Law No: 44 of 1973, which interpreted "admiralty jurisdiction" was repealed by section 62 of the Judicature Act No: 2 of 1978. It repealed the entirety of chapter 1 of the Administration of Justice Law which consisted of sections 5 to 54. Counsel submitted that the effect of this repeal was to obliterate it completely and Chapter 1 consisting of Sections 5 to 54 must now be considered as if it never existed.

The Judicature Act by section 13 (2) then provided as follows: "The admiralty jurisdiction vested in the High Court shall be as provided by law for the time being in force".

Counsel submitted therefore that since 2.7.79, the date on which the Judicature Act No: 2 of 1978 came into operation, there was no law in force providing for admiralty jurisdiction, and that there was no law saving its continuity. There was a lacuna in the law till the passing of the Admiralty Jurisdiction Act No. 40 of 1983, the long title of which states that it is an Act to amend and consolidate the law relating to admiralty jurisdiction. This Act was brought into operation on 1.11.83.

The words "for the time being in force" used in Section 13 (2) he submitted, relates to the time when the question or dispute arises or when proceedings commence or when an action is instituted. He cited (1975) 2 AER 337 at 345 (HL)<sup>(a)</sup>, in which case the question arose for decision whether under section 56 (1) (a) of the Town and Country Planning Act, 1971, a church was used on a particular day for ecclesiastical purposes. It was held that the words "for the time being" used clearly referred to the time of the making or contemplated making of a possession order.

He submitted that when this dispute arose in September '83, there was no law in force which provided for the exercise of admiralty jurisdiction by the High Court and as such, the order for the arrest of the vessel "Shantha Rohan" was made *per incuriam*.

Learned Counsel for the respondent submitted in reply, that the Administration of Justice Law and the Judicature Act were laws to regulate the procedure of the newly established systems of the Courts. These laws did not provide for the substantive law like the Admiralty Jurisdiction Act No. 40 of 1983. He submitted that section 54 of the Administration of Justice Law was an "interpretation" section by which its nature could not have provided for the substantive law. The substantive law relating to admiralty matters, he submitted, was the Civil Law Ordinance, which introduced the law of England and which still continues to be in effect without repeal.

Counsel referred to section 3 (2) of the Administration of Justice Law which saved the Rules relating to admiralty jurisdiction and submitted that it would not have been the intention of the legislature to take away the substantive law while preserving the Rules. He submitted that an interpretation leading to an absurdity should be avoided, as the legislature should not be presumed to create a lacuna in the law.

He submitted that section 54 of the Administration of Justice Law should be given its plain ordinary meaning and that the intention of the legislature, to provide for its continuity while recognising a subsisting law, would be evident if its words are re-arranged to read as, "admiralty jurisdiction means the admiralty jurisdiction for the time being of the High Court of England until otherwise provided for by written law". He referred to the expression "as provided for the time being in force" in section 13 (2) of the Judicature Act, which he submitted recognised an existing law. The intention of the legislature was finally when given effect to by the passing of the Admiralty Jurisdiction No: 40 of 1983 which he submitted, by reference to its long title, recognised an existing law, which it sought to amend and consolidate. His position was that the High Court had jurisdiction which it exercised validly and as provided by the existing substantive law.

It would now be appropriate firstly to determine the nature of the existing jurisdiction when the Administration of Justice Law No. 44 of 1973 took effect. As noted earlier, section 54 contained in Chapter 1, reads as follows; "In this Chapter, unless the context otherwise requires . . . admiralty jurisdiction means, until otherwise provided for by written law, the admiralty jurisdiction for the time being of the High Court of England". There was no written law which provided "otherwise" for admiralty jurisdiction during the period of the operation of this law.

The effect of Section 2 (2) of the Colonial Courts of Admiralty Act, 1890, of England was to limit the jurisdiction of the Colonial Court of Admiralty established in pursuance of it by the Ceylon Courts of Admiralty Ordinance No. 2 of 1891, to the admiralty jurisdiction of the High Court of England exercised at that point of time. In the case of "*The Yuri Maru – The Woron*",<sup>(1)</sup> it was held "the true intent of the Act

appears to their Lordships to have been to define as a maxim of jurisdictional authority for the Courts to be set up thereunder the admiralty jurisdiction of the High Court of England as it existed at the time when the Act was passed".

It also held that what shall be added or excluded is left for the independent legislative determination of the respective colonies. Although there was an expansion of the admiralty jurisdiction in England in the nineteenth century and these extensions of jurisdiction were granted to the High Court of Admiralty, it was not automatically operative overseas. Thus the extension of admiralty jurisdiction of the High Court by the Administration of Justice Act, 1920, repealed and re-enacted by the Supreme Court of Judicature (Consolidation) Act 1925, did not apply to the Colonial Courts of Admiralty. This view of the Privy Council was followed by our Colonial Court of Admiralty in two decisions reported in (1961) 63 NLR 337 at 343<sup>(6)</sup>, and (1961) 64 NLR 271<sup>(7)</sup>.

The difference in the scope and extent of the admiralty jurisdiction in this country and in England appears to be that, whilst the admiralty jurisdiction of our country remained limited to that prescribed by the Ceylon Courts of Admiralty Ordinance No. 2 of 1891, Britain being a common law country, admiralty law was superimposed over the years by various enactments and it was expanded from time to time.

The statute governing admiralty jurisdiction in England as at 1st January 1974 when the Administration of Justice Law No. 44 of 1973 came into effect was the Administration of Justice Act, 1956, which was based partly on the International Convention relating to the arrest of Seagoing Ships and the International Convention on certain Rules concerning Civil Jurisdiction in Matters of Collision, both signed at Brussels, on 10th May 1952, and to both of which the United Kingdom was a signatory.

The jurisdiction then subsisting in England is set out in Halsbury's Laws of England, para 307, 4th edition, as follows;

"The admiralty jurisdiction of the High Court of Justice is derived partly from statute and partly from the inherent jurisdiction of the High

Court of Admiralty. The Administration of Justice Act 1956 lists the areas of jurisdiction of the High Court under eighteen paragraphs. In addition the High Court has any other jurisdiction which either was vested in the High Court of Admiralty before 1st November 1983 or is conferred on the High Court as being a Court with admiralty jurisdiction by or under any Act which came into operation on or after that date, and also any other jurisdiction connected with ships or aircraft vested in the High Court which is for the time being assigned by the rules of the court to the Queens Bench Division and directed by the rules to be exercised by the Admiralty Court."

The effect of the plain words in Section 54 of the Administration of Justice Law No: 44 of 1973 is to vest this extended jurisdiction of the High Court of Justice in England, in the High Court of Colombo. The observations of Vaughan Williams L.J. in what appears to be an interpretation in a similar context in *Hertfordshire Country Council v. Barnet Rural Council*<sup>10</sup>, is of relevance; "It is said that if we construe this section according to its plain meaning, we shall be imputing to the legislature that by this section they passed a law which is not entirely consistent with previous legislation and with the legal history of this matter. That is not, in my opinion a sufficient reason for not giving to this section the plain meaning of the words used. It is not a sufficient reason to compel or justify us in refusing to give to this section that which appears to be the manifest meaning of the legislature".

The position taken up on behalf of the respondent that there was existing substantive law through the medium of the Civil Law Ordinance No. 2 of 1852 can now be considered. It is manifest from a scrutiny of the provisions of the Civil Law Ordinance that its dominant purpose was to introduce the Law of England to be observed in certain maritime matters. Comparatively, the object of the Ceylon Courts of Admiralty Ordinance, No. 2 of 1891, was to amend the law "respecting the exercise of admiralty jurisdiction in Ceylon". This later Ordinance did not repeal the Civil Law Ordinance. Thus there was no need for a specific later Ordinance relating to the exercise of admiralty jurisdiction if the Civil Law Ordinance had adequately provided for this object earlier.

"The term jurisdiction does not connote the form or manner in which the act is to be done but relates to the power, scope and the ambit of authority." (Bindra's Interpretation of Statutes, 7th edition, page 226.) The expression jurisdiction means also the power to hear and determine the matters litigated. It is to be noted that the Administration of Justice Act, 1956, (4 & 5 Eliz. c. 46) provides in section 1 (1) as follows; "The admiralty jurisdiction of the High Court shall be as follows, that is to say, jurisdiction to hear and determine ...". Similarly the admiralty Jurisdiction Act, No. 40 of 1983, provides in Section 2 (1); "The admiralty jurisdiction of the High Court shall . . . be as follows, that is to say, jurisdiction to hear and determine . . .".

The scope and the ambit of the admiralty jurisdiction was not specified in the Civil Law Ordinance and though it provided for the substantive law to be administered, it was not the substantive law relating to the exercise of the admiralty jurisdiction. H. N. G. Fernando, J. (as he then was) observed on a consideration of Section 2 of the Civil Law Ordinance in *The Government of the United States of America v. The Ship "Valiant Enterprise"*,<sup>(6)</sup> "That provision only means in my opinion that this Court must administer substantive law which would at a given time be administered in maritime matters by the High Court, provided of course that this court has *aliunde* the jurisdiction to entertain a suit in respect of the particular matter involved".

Thus a distinction has to be drawn between the introduction of the law of England as the law to be administered in certain maritime matters as was in fact sought to be done by the Civil Law Ordinance, and stating that it made applicable the law relating to the exercise of admiralty jurisdiction which had characteristics of its own like the availability of the action *in rem* which was available only in admiralty jurisdiction. The admiralty jurisdiction developed independently and had its own rights and remedies in an area defined by content. This distinct admiralty jurisdiction cannot be said to have been introduced into our country by the Civil Law Ordinance.

I am of the view that the Civil Law Ordinance did not operate at any time as the instrument which enabled the current inherent, and statutory admiralty jurisdiction of England to be invoked and made applicable as the admiralty jurisdiction to be exercised by our Court.

The law which empowered the Colonial Court of Admiralty to exercise its admiralty jurisdiction vested in it was, until its repeal, the Ceylon Courts of Admiralty Ordinance No. 2 of 1891. The Administration of Justice Law, No. 44 of 1973, having repealed by section 3(1) the Ceylon Courts of Admiralty Ordinance, provided by section 54, for the exercise of admiralty jurisdiction by the High Court not by reference to a statute, but by reference to the admiralty jurisdiction for the time being of the High Court of England. It further provided that this admiralty jurisdiction was to prevail until "it was otherwise provided for by written law". No "written law" provided "otherwise" for its exercise during the period section 54, continued to be applicable.

Section 13(2) of the Judicature Act provided that the admiralty jurisdiction "shall be as provided by law for the time being in force". There was, thus, no law relating to the exercise of admiralty by the High Court either by reference to the provision of any statute or by reference to the admiralty jurisdiction of the High Court of England with the repeal of section 54, included in chapter 1 of the Administration of Justice Law.

The "written law" which finally set out the nature, scope, extent and the mode of exercising of admiralty jurisdiction was the Admiralty Jurisdiction Act No. 40 of 1983, which came into operation on 1.11.83. It provided for the High Court to have jurisdiction to hear and determine almost the identical questions and claims which the High Court in England had the power to hear and determine in terms of the Administration of Justice Act, 1956.

The submission that the preamble to this Act is relevant to construe the words in section 13(2) of the Judicature Act as recognising an existing substantive law is untenable, as there was no written law at this time relating to admiralty jurisdiction which needed to be amended or consolidated. It was further contended that the expression, "as provided for by law for the time being in force" in section 13(2) itself refers to an existing law. If this was so, then a specific repealing clause would have been inserted in the Admiralty Act, but no such clause has been included. Besides, if it was the intention of the legislature that the jurisdiction of the High Court of

England as provided for in the Administration of Justice Act 1956, should continue to apply, then after the words "as provided for by law for the time being in force" in section 13(2), the words "in England" would have been added.

Counsel submitted that the legislature would not enact a statute devoid of purpose and that a construction which will make a provision purposeful should be adopted. If the purpose and the effect of section 13(2) of the Judicature Act was the same as that of section 54 of the Administration of Justice Law, that is, to make the admiralty jurisdiction of the High Court of England applicable to our Admiralty Court, then, similar words to that effect would have been used in the Judicature Act. The words used in section 13(2) of the Judicature Act lack the definiteness of purpose and precision to achieve this effect unlike the words used in section 54 of the Administration of Justice Law. It is therefore not possible to attribute to the legislature an intent which is not in any way expressed in the statute. In the absence of any provision making its intention clear it cannot be said that the admiralty jurisdiction of our High Court continued to be that of the High Court of England after the Judicature Act came into operation.

It is a principle of interpretation that to constitute an express repeal there must be not only a reference to a prior Act but also the use of words apt to effect this repeal. – Craies on Statute Law P.351 (6th ed.). The conditions necessary for an effective repeal are evident in section 62 of the Judicature Act. It makes reference to chapter 1 of the Administration of Justice Law which it seeks to repeal and it uses words which are clear and apt for the purpose of repeal.

I hold that section 62 of the Judicature Act expressly and effectively repealed chapter 1 of the Administration of Justice Law No. 44 of 1973, which included section 54, the provision which related to the exercise of admiralty jurisdiction.

Though section 13(2) of the Judicature Act envisaged that the admiralty jurisdiction of the High Court shall be as provided for in the law for the time being in force, the admiralty jurisdiction vested in the High Court by the Judicature Act, No. 2 of 1978, could not have been legally exercised after 2.7.79, as there was no law in force which

provided for it until 1.11.83 when the Admiralty Jurisdiction Act, No. 40 of 1983, relating to the exercise of admiralty jurisdiction was brought into operation.

For these reasons I hold that the learned High Court Judge erred in law in deciding that a substantive law existed in admiralty jurisdiction between the period 2.7.79 and 31.10.83 and that the law that prevailed at the time material to this action was that which prevailed for the time being in the High Court of England and which was consolidated in the Administration of Justice Act, 1956.

The order of the learned High Court Judge dated 30th August 1984 is therefore set aside.

In consequence, I hold that the order of the learned High Court Judge directing the issue of the writ of summons and the warrant of arrest of the vessel "Shantha Rohan" made on 1st September 1983 when there was no law in force enabling the High Court to exercise admiralty jurisdiction, is invalid and is hereby rescinded and I further order that the writ and the warrant be recalled.

The appeal is allowed at costs fixed at Rs. 2000/-.

**A. De Z. Gunawardana, J.** – I agree.

*Appeal allowed.*