

## Admiralty Arrest Procedures Fail The Due Process Test: *Alyeska Pipeline Service Company v. Vessel BAY RIDGE*

Until recently the long-established procedures of the admiralty *in rem* arrest<sup>1</sup> had never faced a serious constitutional challenge. Federal courts began to question their constitutionality,<sup>2</sup> however, soon after the Supreme Court's expanded enunciation of due process standards in *Sniadach v. Family Finance Corp.*,<sup>3</sup> *Fuentes v. Shevin*,<sup>4</sup> and *Mitchell v. W. T. Grant Co.*<sup>5</sup> In *Alyeska Pipeline Service Co. v. Vessel BAY RIDGE*,<sup>6</sup> a federal district court in Alaska became the first admiralty court to hold

---

1. These procedures are currently embodied in Rules C and E of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure. The current rules were promulgated in 1966, but *in rem* arrest procedures are little changed from those in the Admiralty Rules of 1920 and 1844. See Order Amending Federal Rules of Civil Procedure, 383 U.S. 1031 (1966); Order Adopting and Promulgating United States Admiralty Rules, 254 U.S. 673 (1920); Order Adopting and Promulgating Rules of Practice for the Courts of Admiralty, 44 U.S. (3 How.) ix (1845); 7A J. MOORE & A. PELAEZ, MOORE'S FEDERAL PRACTICE ¶¶ .01-.02, .20-.21 (2d ed. 1981). These procedures, moreover, were in use long before embodiment in the rules. See, e.g., *The NES-TOR*, 18 F. Cas. 9 (C.C.D. Me. 1831) (Story, J.); *The INVINCIBLE*, 13 F. Cas. 72, 76 (C.C.D. Mass. 1814) (Story, J.), *aff'd*, 14 U.S. (1 Wheat.) 238 (1816).

2. The majority of courts have upheld the constitutionality of the *in rem* arrest procedures. See *Amstar Corp. v. S/S ALEXANDROS T.*, 664 F.2d 904 (4th Cir. 1981); *United States v. KAIYO MARU* No. 53, 503 F. Supp. 1075 (D. Alaska 1980); *Merchants Nat'l Bank v. Dredge GENERAL G.L. GILLESPIE*, 488 F. Supp. 1302 (W.D. La. 1980), *aff'd*, 663 F.2d 1338 (5th Cir. 1981); *Sideris Shipping Co. v. M/V CARIBBEAN ARROW*, 1980 A.M.C. 1296 (M.D. Fla. 1979); *A/S Hjalmar Bjorges Rederi v. The Tug Boat CONDOR*, 1979 A.M.C. 1696 (S.D. Cal. 1979); *Stoner v. O/S NEISKA II*, 1978 A.M.C. 2650 (D. Alaska 1978); *Central Soya Co. v. Cox Towing Corp.*, 417 F. Supp. 658 (N.D. Miss. 1976); *Bethlehem Steel Corp. v. S/T VALIANT KING*, 1977 A.M.C. 1719 (E.D. Pa. 1974).

A few courts have ruled admiralty arrest procedures unconstitutional. See *Alyeska Pipeline Serv. Co. v. Vessel BAY RIDGE*, 509 F. Supp. 1115 (D. Alaska 1981) (noted case); *P.C. Int'l, Inc. v. Vessel SUSAN*, 1980 A.M.C. 2062 (S.D. Fla. 1980) (dictum); *Karl Senner, Inc. v. M/V ACADIAN VALOR*, 485 F. Supp. 287 (E.D. La. 1980) (court had *in personam* jurisdiction over owner), noted in 55 TUL. L. REV. 936 (1981); *Techem Chem. Co. v. M/T CHOYO MARU*, 416 F. Supp. 960 (D. Md. 1976) (dictum). For an analytical overview of most of these decisions, see Batiza & Partridge, *The Constitutional Challenge to Maritime Seizures*, 26 LOY. L. REV. 203 (1980).

3. 395 U.S. 337 (1969).

4. 407 U.S. 67 (1972).

5. 416 U.S. 600 (1974).

6. 509 F. Supp. 1115 (D. Alaska 1981).

the arrest procedures unconstitutional in an action purely *in rem*.<sup>7</sup> By applying the Supreme Court's due process standards to admiralty cases, the court protected the maritime property owner's rights. However, the holding does not protect the substantive rights of admiralty plaintiffs. In order to protect both parties' rights, the Supplemental Rules of Civil Procedure should be amended to provide judicial participation in the arrest, and immediate post-seizure hearing.

In *Alyeska*, an oil spill occurred during the loading of the tanker BAY RIDGE at the terminal of the Alyeska pipeline. Blaming the vessel and her crew for the mishap, the plaintiff pipeline company brought an *in rem* action to enforce a maritime lien<sup>8</sup> against the BAY RIDGE and secured the vessel's arrest pursuant to Supplemental Rule C of the Federal Rules of Civil Procedure.<sup>9</sup> The owners and charterers of the BAY RIDGE

---

7. The only other decision to actually strike down an *in rem* arrest was *Karl Senner, Inc. v. M/V ACADIAN VALOR*, 485 F. Supp. 287 (E.D. La. 1980). In *Senner*, the court also had *in personam* jurisdiction over the owner of the seized vessel.

8. For a discussion of the maritime lien, see *infra* text accompanying notes 16-28. In *Alyeska*, the claimants argued that the costs to a private party of removing oil from navigable waters does not establish a maritime lien. Relying on *California Dep't of Fish and Game v. S.S. BOURNEMOUTH*, 307 F. Supp. 922 (C.D. Cal. 1969), the *Alyeska* court held that a maritime lien was established. 509 F. Supp. at 1118.

9. Rule C provides, in pertinent part:

**ACTIONS IN REM: SPECIAL PROVISIONS**

(1) **When available.** An action in rem may be brought:

- (a) To enforce any maritime lien;
- (b) Whenever a statute of the United States provides for a maritime action in rem or a proceeding analogous thereto.

Except as otherwise provided by law a party who may proceed in rem may also, or in the alternative, proceed in personam against any person who may be liable. . . .

(2) **Complaint.** In actions in rem the complaint shall be verified on oath or solemn affirmation. It shall describe with reasonable particularity the property that is the subject of the action and state that it is within the district or will be during the pendency of the action. . . .

(3) **Process.** Upon the filing of the complaint the clerk shall forthwith issue a warrant for the arrest of the vessel or other property that is the subject of the action and deliver it to the marshal for service. . . .

(4) **Notice.** No notice other than the execution of the process is required when the property that is the subject of the action has been released in accordance with Rule E(5). If the property is not released within 10 days after execution of process, the plaintiff shall promptly or within such time as may be allowed by the court cause public notice of the action and arrest to be given in a newspaper of general circulation in the district, designated by order of the court. Such notice shall specify the time within which the answer is required to be filed as provided by subdivision (6) of this rule. . . .

intervened as claimants and brought a motion to dismiss the complaint and vacate the arrest. The court granted the motion, holding that where arrest is initiated by a private party the procedures of Rules C and E violate basic concepts of due process as defined in the *Sniadach* and *Fuentes* series of recent United States Supreme Court decisions.

Seizure of a vessel under Rule C is a summary *ex parte* procedure. The court clerk issues a warrant for the arrest of the vessel upon the filing of a verified complaint.<sup>10</sup> The allegations must be sufficiently specific to allow the defendant or claimant to commence an investigation without moving for a more definite statement.<sup>11</sup> If the property is not released within ten days of the seizure, notice by publication is required; otherwise, the only notice required is execution of process upon the property by the United States Marshal.<sup>12</sup> The plaintiff need not post a preseizure bond for the protection of the owner, but is required to pay any costs involved in seizing and maintaining the arrested property.<sup>13</sup> Nothing in the rules assures the property owner a prompt postseizure hearing to test the validity of the plaintiff's claim.

The Rule C arrest is an *in rem* procedure, allowing the plaintiff to proceed directly against the seized property as the defendant.<sup>14</sup> The sole purpose of the *in rem* action is to carry the maritime lien into effect.<sup>15</sup>

A maritime lien arises from certain admiralty claims in contract, or tort,<sup>16</sup> and gives the aggrieved party a property interest

---

(6) Claim and Answer. . . . The claimant of property that is the subject of an action in rem shall file his claim within 10 days after process has been executed, or within such additional time as may be allowed by the court, and shall serve his answer within 20 days after the filing of the claim. The claim shall be verified on oath or solemn affirmation, and shall state the interest in the property by virtue of which the claimant demands its restitution and the right to defend the action. . . .

FED. R. CIV. P. SUPP. RULE C.

10. FED. R. CIV. P. SUPP. RULE C(2), (3). *See supra* note 9 (text of rule).

11. FED. R. CIV. P. SUPP. RULE E(2)(a).

12. FED. R. CIV. P. SUPP. RULE C(4). *See supra* note 9 (text of rule).

13. FED. R. CIV. P. SUPP. RULE E(4)(e) (referring to 28 U.S.C. § 1921 (1976)).

14. FED. R. CIV. P. SUPP. RULE E(4)(e). Under American admiralty law the vessel is viewed as a legal person, independently liable as the defendant in a proceeding *in rem* to enforce a maritime lien. G. GILMORE & C. BLACK, *THE LAW OF ADMIRALTY*, § 9-3 (2d ed. 1975). Under Rule C the plaintiff may also proceed *in personam* against any person who may be liable. FED. R. CIV. P. SUPP. RULE C(1)(b). *See supra* note 9 (text of rule).

15. *The Rock Island Bridge*, 73 U.S. (6 Wall.) 213, 215 (1867).

16. G. GILMORE & C. BLACK, *supra* note 14, § 9-20.

in the *res* equal to the amount of the alleged liability.<sup>17</sup> The lien may arise even though the owner of the vessel is not personally liable on the underlying claim.<sup>18</sup> Enforcement of the lien through a judicial sale of the property gives the new purchaser a good title free from all other interests, including all maritime liens.<sup>19</sup> On the other hand, a maritime lien survives a private sale, even a sale to an innocent purchaser.<sup>20</sup> Generally, among maritime lienholders the latest lien has first priority to the proceeds of a judicial sale.<sup>21</sup>

The maritime lien plays an important role in facilitating the smooth operation of maritime commerce.<sup>22</sup> Suppliers and others who do business with vessels are more likely to extend credit to even a strange or foreign ship because the remedy of a maritime lien is available. Without the lien the vessel would no longer serve as security for any contractual or tort liability she might incur and some other form of security would be required prior to dealing with the vessel. Arranging for letters of credit or similar security could prove costly and in some instances delay the vessel.<sup>23</sup> Moreover, the importance of the maritime lien and *in rem* arrest is magnified by their universal acceptance in international maritime law. Because the lien is recognized throughout the world,<sup>24</sup> it is a critical part of admiralty jurisprudence, and in United States' territories the only way it may be enforced is by the procedures of the Rule C *in rem* arrest.<sup>25</sup>

The claimants in *Alyeska* argued that these procedures do not afford maritime property owners due process<sup>26</sup> as required by the series of Supreme Court cases beginning in 1969 with *Sniadach v. Family Finance Corp.*<sup>27</sup> In *Sniadach*, the Supreme Court struck down a Wisconsin wage garnishment statute that

---

17. *Id.* § 1-12.

18. *Id.* § 9-5 to -16. For example, if an innocent purchaser bought the vessel by private sale after a maritime lien had arisen against the vessel, the vessel could be seized and sold to satisfy the lien holder's claim even though the new owner could not have been personally liable on the claim.

19. *Id.* § 9-2.

20. *The Rock Island Bridge*, 73 U.S. (6 Wall.) 213, 215 (1867).

21. G. GILMORE & C. BLACK, *supra* note 14, § 9-2.

22. 2 A. SANN, S. BELLMAN & B. CHASE, *BENEDICT ON ADMIRALTY* § 21 (rev. 7th ed. 1981).

23. *Id.*

24. G. GILMORE & C. BLACK, *supra* note 14, § 9-85.

25. *Id.* § 1-12.

26. 509 F. Supp. at 1118.

27. 395 U.S. 337 (1969).

failed to provide the wage-earner with notice or an opportunity to be heard before the garnishment.

Forcing maritime lienholders to provide preseizure notice, however, would severely limit the effectiveness of the *in rem* action. Because of the extremely mobile nature of vessels and the necessity of a seizure to acquire *in rem* jurisdiction, prior notice would allow the owner to avoid or postpone suit by removing his vessel or other assets from the jurisdiction of the district court where the plaintiff brought the action. Delay in suit could effectively extinguish the plaintiff's remedy by increasing the chances that a later maritime lien will arise. If the value of a subsequent lien exceeded the value of the property, the earlier lienholder's interest in the property would disappear.<sup>28</sup> The argument against requiring preseizure notice would apply *a fortiori* to a preseizure hearing. No admiralty court has held that preseizure notice and hearing are strictly required by the Constitution.<sup>29</sup>

In *Fuentes v. Shevin*,<sup>30</sup> the Court extended the requirements of *Sniadach* to deprivations of any type of property, but also recognized an exception to the requirements of prior notice and hearing in certain "extraordinary situations." The Court listed three conditions which must be met for the exception to apply: first, the seizure must be directly necessary to secure an important governmental or general public interest; second, there must be a special need for very prompt action; and finally, a government official responsible for determining whether seizure is necessary or justified must be the one who initiates the seizure.<sup>31</sup>

Several admiralty courts have seized upon the "extraordinary situation" exception as justification for the procedures of admiralty arrest. Some have found the public interest requirement inherently satisfied by the jurisdictional nature of the *in rem* arrest. In *Central Soya Co. v. Cox Towing Corp.*,<sup>32</sup> a federal district court in Mississippi found that the acquisition of juris-

---

28. See *supra* text accompanying note 21.

29. In *Karl Senner, Inc. v. M/V ACADIAN VALOR*, 485 F. Supp. 287 (E.D. La. 1980), the court found the *in rem* arrest unconstitutional when "accomplished without prior notice, hearing or judicial intervention." *Id.* at 295. See *supra* note 7.

30. 407 U.S. 67 (1972). In *Fuentes*, the Supreme Court struck down Florida and Pennsylvania replevin statutes that authorized summary seizure without prior notice to the owner or an opportunity for him to be heard. *Id.*

31. *Id.* at 90-91.

32. 417 F. Supp. 658 (N.D. Miss. 1976).

diction over a vessel is an important public interest and therefore a Rule C arrest meets the first *Fuentes* requirement. A district court in California reached the same conclusion in *A/S Hjalmer Bjorges Rederi v. The Tug Boat CONDOR*.<sup>33</sup> The courts in *Central Soya* and *CONDOR* relied heavily on the *Fuentes* Court's citation<sup>34</sup> of *Ownbey v. Morgan*<sup>35</sup> for the proposition that acquisition of jurisdiction is in itself an important public interest. Reliance on *Ownbey*, however, is misplaced. In *Ownbey*, the Court upheld an attachment statute that required a nonresident defendant whose property had been attached to post a special bail before he could appear and defend. The defendant challenged only the requirement that he post bail before he could defend. Thus, the issue was the validity of the bail requirement rather than the validity of the attachment to secure jurisdiction.<sup>36</sup> The Supreme Court, in *Shaffer v. Heitner*,<sup>37</sup> further weakened reliance on *Ownbey* by pointing out in a footnote the actual issue in *Ownbey* and stating: "We do not read the recent references to *Ownbey* as necessarily suggesting that *Ownbey* is consistent with more recent decisions interpreting the Due Process Clause."<sup>38</sup>

The public interest requirement is better explained in *Calero-Toledo v. Pearson Yacht Leasing Co.*,<sup>39</sup> the only Supreme Court case to apply the "extraordinary situation" exception. In *Calero-Toledo*, the Court upheld a Puerto Rican statute that authorized the seizure and forfeiture by police of a pleasure boat used for drug smuggling. The public interest served in *Calero-Toledo* was more than just the acquisition of jurisdiction. The seizure also prevented continued criminal use of the property. The *Alyeska* court construed *Calero-Toledo* to require something beyond acquisition of jurisdiction to satisfy the public interest test of *Fuentes*; the acquisition of jurisdiction

---

33. 1979 A.M.C. 1696, 1702 (S.D. Cal. 1979).

34. 407 U.S. at 91 n.23.

35. 256 U.S. 94 (1921).

36. *Id.* at 100, 103.

37. 433 U.S. 186 (1977).

38. *Id.* at 194 n.10. It should be noted that the majority opinion in *Shaffer* was limited to the issue of jurisdictional due process.

39. 416 U.S. 663 (1974). *Calero-Toledo* did not involve an admiralty seizure. Although it involved the seizure of a vessel, the arrest was carried out pursuant to a Puerto Rican forfeiture statute rather than the Supplemental Rules of the Federal Rules of Civil Procedure.

must itself serve some important public interest.<sup>40</sup> The *CONDOR* court argued that the public interest requirement was met by the public's vested interest in the smooth operation of maritime commerce.<sup>41</sup> The *Alyeska* court, however, found that only private interests were directly at stake in an action initiated by a private party.<sup>42</sup> The list of examples of "extraordinary situations" in *Fuentes*, indicating circumstances involving governmental or general public concern, supports the view of the *Alyeska* court.<sup>43</sup>

The *Alyeska* holding also makes sense in light of the third "extraordinary situation" requirement: the initiation of the seizure by a governmental official. A seizure initiated by a public official normally involves an obvious governmental or public interest; more than private purposes are served. Although most courts have acknowledged that the second *Fuentes* requirement of a need for very prompt action is met in admiralty arrests, no court has found that the arrest meets the third requirement where the plaintiff is a private party.<sup>44</sup>

In *Mitchell v. W. T. Grant Co.*,<sup>45</sup> the Supreme Court retreated from its strict *Sniadach* and *Fuentes* requirements of pre-seizure notice and hearing. The *Mitchell* Court upheld Louisiana sequestration procedures that allowed seizure without prior notice and hearing. The Court found, however, that the Louisiana statute had four saving features.<sup>46</sup> First, the statute required judicial supervision of the writ-issuing procedure. Sec-

---

40. 509 F. Supp. at 1122.

41. 1979 A.M.C. at 1702.

42. 509 F. Supp. at 1119. The court in *Alyeska* had itself applied the "extraordinary situation" exception in the earlier case of *United States v. KAIYO MARU* No. 53, 503 F. Supp. 1075 (D. Alaska 1980). That case involved the United States Coast Guard's seizure of a fishing vessel for violations of a federal statute. The *Fuentes* requirements were clearly met in *KAIYO MURU*. The arrest was initiated by government officials to enforce federal fishing laws. *Id.* at 1088. A prompt seizure was necessary to enforce the law before the vessel left the United States' territorial jurisdiction. *Id.*

43. As the *Fuentes* Court stated: "Thus, the Court has allowed summary seizure of property to collect the internal revenue of the United States, to meet the needs of a national war effort, to protect against the economic disaster of a bank failure, and to protect the public from misbranded drugs and contaminated food." 407 U.S. at 91-92. The *Fuentes* Court went on to state that no important governmental or general public interest is served when "no more than private gain is directly at stake." *Id.*

44. The courts in *Central Soya* and *CONDOR* each argued that this deficiency alone does not invalidate the arrest. *Central Soya*, 417 F. Supp. at 662-64; *CONDOR*, 1979 A.M.C. at 1702.

45. 416 U.S. 600 (1974).

46. *Id.* at 605-06.

ond, the complaint must have been verified and based on specific, nonconclusory allegations. Third, an immediate post-seizure hearing was provided; and finally, the statute required the plaintiff to file a preseizure bond sufficient to protect against mistaken seizure. It is not clear whether the Court found all of these features necessary to protect the property owner.<sup>47</sup>

The *Alyeska* court found that the arrest procedures of the Federal Rules do not contain the additional safeguards articulated in *Mitchell*. The court noted that the rules fail to require judicial participation in the warrant-issuing process, nonconclusory allegations in the complaint, the posting of a pre-arrest bond by the plaintiff, and an immediate postseizure hearing for the property owner.<sup>48</sup> The *Alyeska* court also found that the Local Rules of the Federal District Court of Alaska did not provide the missing safeguards.<sup>49</sup>

Another federal district court in *Merchants National Bank v. Dredge General G.L. GILLESPIE*<sup>50</sup> held that a local rule providing for a prompt postseizure hearing guarantees procedural due process to a maritime property owner. The argument that a prompt postseizure hearing is the only *Mitchell* safeguard required to assure the owner due process is not without merit. The other *Mitchell* safeguards—judicial supervision, nonconclusory allegations, and a preseizure bond—are all *ex parte* procedures. They leave the protection of the property owner's rights in the hands of someone other than the property owner. While it is possible that a judge's review of nonconclusory allegations might weed out some frivolous or ungrounded claims and that a preseizure bond might discourage malicious or mistaken suits, no *ex parte* procedure can ever be a sure guarantee against such dangers.<sup>51</sup> On the other hand, an immediate postseizure hearing

---

47. Whether the Supreme Court would have upheld the Louisiana statute with fewer safeguards cannot be determined. In *North Ga. Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601, 606-07 (1975), the Supreme Court struck down a garnishment statute that had none of the saving characteristics of *Mitchell*. Certainly some of the *Mitchell* safeguards standing alone would be insufficient. Both of the replevin statutes in *Fuentes* required the plaintiff to post a security bond before seizure, yet the Court found this safeguard insufficient. 407 U.S. at 81-82.

48. 509 F. Supp. at 1120.

49. *Id.*

50. 488 F. Supp. 1302 (W.D. La. 1980), *aff'd*, 663 F.2d 1338 (5th Cir. 1981).

51. As the *Fuentes* Court stated:

Lawyers and judges are familiar with the phenomenon of a party mistakenly but firmly convinced that his view of the facts and law will prevail, and therefore quite willing to risk the costs of litigation. Because of the understandable,



is an adversary proceeding in which the property owner has the opportunity to explain any factual or legal deficiencies in the allegations. As the *Fuentes* Court points out:

[W]hen a person has an opportunity to speak up in his own defense, and when the State must listen to what he has to say, substantively unfair and simply mistaken deprivations of property interests can be prevented. It has long been recognized that "fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights. . . . [And] no better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and an opportunity to meet it."<sup>52</sup>

An immediate postseizure hearing where the plaintiff must prove probable cause would prevent the most serious damages likely to arise from an unwarranted or mistaken seizure of property. A hearing would cure most of the ills the other safeguards prevent as well as avoid the dangers that those *ex parte* procedures cannot prevent. A guarantee of an immediate postseizure hearing is certainly the most crucial and basic of *Mitchell's* safeguards and should be the absolute minimum guaranteed to the property owner.

The *Alyeska* court observed that in most cases involving private parties, due process requires nonconclusory allegations and judicial participation as well as immediate postseizure hearing.<sup>53</sup> Review of the writ and complaint by a judge or magistrate would be especially meaningful in an *in rem* action where the right to the arrest is contingent upon the existence of a maritime lien. A quick review by a judicial officer would prevent arrests legally unsupported by a maritime lien in the plaintiff. Judicial scrutiny of the complaint also would effectively cure the ills of conclusory allegations. A preseizure bond, however, should not be required. The only way it prevents an unwarranted seizure is to discourage malicious or careless claims. The same purpose is accomplished in admiralty arrest by the current requirement

---

self-interested fallibility of litigants, a court does not decide a dispute until it has had an opportunity to hear both sides—and does not generally take even tentative action until it has itself examined the support for the plaintiff's position.

407 U.S. at 83-84.

52. *Id.* at 81 (quoting *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 170-72 (1951) (Frankfurter, J., concurring)).

53. 509 F. Supp. at 1123.

that plaintiff post a bond for the costs of maintaining the vessel while in the custody of the court.<sup>54</sup> Consequently, the Supplemental Rules should be amended to provide for a prompt post-seizure hearing and preseizure judicial review of the complaint.

Rule C's current notice provision<sup>55</sup> satisfies due process requirements. In the seminal case of *Mullane v. Central Hanover Bank & Trust Co.*,<sup>56</sup> the Supreme Court stated that notice should be of a nature to reasonably convey the required information and that the means should be the type that would be used by one who wanted to actually inform the interested party. If the chosen method is reasonably certain to inform those affected it is constitutionally valid.<sup>57</sup> Notice by execution of process upon the vessel is probably the only method that is reasonably certain to quickly inform the owners and charterers of the plaintiff's action against the ship.<sup>58</sup> As agent for the owner or charterers, the master of the vessel is immediately made aware of the arrest. The master can then inform the appropriate interested parties.

Although most admiralty courts that have ruled on the constitutionality of *in rem* arrest procedures have recognized the applicability of the *Sniadach*, *Fuentes*, and *Mitchell* decisions, some have found that nonadmiralty decisions cannot determine the constitutionality of admiralty procedures. In *Amstar Corp. v. S/S ALEXANDROS T.*,<sup>59</sup> the Fourth Circuit pointed to the fact that the Supreme Court never referred to maritime law and practice in any of the opinions cited. The *Amstar* court found this omission significant noting that, although the Supreme Court relied on precedents from many areas of common law, it made no reference to two centuries of admiralty suits *in rem*.<sup>60</sup> Certainly maritime law in general is recognized as distinct from the common law<sup>61</sup> and is not bound by common law. In *Snia-*

---

54. FED. R. CIV. P. Supp. Rule E(4)(e) (referring to 28 U.S.C. § 1921 (1976)).

55. FED. R. CIV. P. Supp. Rule C(4). See *supra* note 9 (text of rule).

56. 339 U.S. 306 (1950).

57. *Id.* at 314-15.

58. *Amstar Corp. v. S/S ALEXANDROS T.*, 664 F.2d 904, 911 (4th Cir. 1981).

59. 664 F.2d 904 (4th Cir. 1981).

60. *Id.* at 909.

61. *Id.* at 908. See generally G. GILMORE & C. BLACK, *supra* note 14, § 1-16. Admiralty law has its roots in the civil law. In the Process Act of 1789, Congress directed the federal courts to employ the "forms and modes of proceedings" of the civil law rather than the common law in admiralty and maritime cases. Act of Sept. 29, 1789, ch. 21, § 2, 1 Stat. 93-94. The justification for maintaining this autonomy derives from the maritime context in which admiralty is set. *In re Louisville Underwriters*, 134 U.S. 488 (1890).

*dach*, *Fuentes*, and *Mitchell*, the Supreme Court dealt primarily with the constitutional rights of property owners in the event of property seizures. Admiralty law is not exempt from constitutional limitations.<sup>62</sup> Whether or not the Supreme Court expressly intended that its decisions bind admiralty courts, the due process standards it laid down would seem at least to be strong persuasive authority in determining the due process rights of a maritime property owner and should be adopted unless lower standards are justified by substantive admiralty law. For example, the *Amstar* court and a district court in *Bethlehem Steel Corp. v. S/T VALIANT KING*,<sup>63</sup> argued that the Supreme Court's decisions are inapplicable even as persuasive authority because of the differences between admiralty arrests and the attachment statutes involved in *Sniadach*, *Fuentes*, and *Mitchell*.

Admiralty arrest is substantively unique from other seizure remedies because of its *in rem* nature. The attachments in the *Sniadach* line of cases were *in personam* actions to enforce the liability of the property owner. The admiralty arrest, on the other hand, is a suit *in rem* to enforce a property interest in the thing seized.<sup>64</sup> The plaintiff proceeds directly against the seized property itself, which is personified as the defendant.<sup>65</sup> This personification of the vessel has been much criticized as "a fiction whose real value is simply as a mechanism to enforce the *in personam* liability of the owner."<sup>66</sup> But fiction or not, the personification principle remains a vital part of admiralty jurisprudence and an *in rem* action may be successful even though the owner is

---

62. *United States v. Steel Tank Barge H 1651*, 272 F. Supp. 658, 659-60 (E.D. La. 1967) (affirming due process notice requirement in admiralty actions).

63. 1977 A.M.C. 1719 (E.D. Pa. 1974).

64. The nature of the remedy *in rem* is very different from an *in personam* action as explained by one authority:

The foundation for the effective exercise of jurisdiction *in rem* is the taking of the vessel or other property that is the subject of the action into the custody of the court and the characteristic virtue of a proceeding *in rem* is that it operates directly upon the *res* as the titular respondent in the suit and the actual subject-matter of the jurisdiction and not, as at common law, mediately through the right, title or interest of a party brought before the court as defendant through personal service or the mere attachment of property as his with a view to subjecting his interest therein to the satisfaction of the judgment.

2 A. SANN, S. BELLMAN & B. CHASE, *BENEDICT ON ADMIRALTY* § 22, at 2-9 to -11 (rev. 7th ed. 1981) (footnote omitted).

65. See *supra* note 14.

66. *Karl Senner, Inc. v. M/V ACADIAN VALOR*, 485 F. Supp. 287, 292 & n.8 (E.D. La. 1980). See also G. GILMORE & C. BLACK, *supra* note 14, § 9-18(a).

not liable.<sup>67</sup> Looking to the vessel's personification as defendant, the court in *VALIANT KING* argued that the Constitution does not guarantee due process rights to an inanimate object.<sup>68</sup> This argument ignores the full import of the personification theory. The vessel is transformed into a legal person for jurisdictional purposes. Therefore, a court's power over the vessel must be exercised as it would be over any other legal person.<sup>69</sup> Furthermore, the personification of the vessel does not obscure the fact that vessels are owned by people who are to be protected by the Constitution from unwarranted or mistaken deprivation of their property.<sup>70</sup>

The *in rem* action is also different from attachment because it may determine more than just the property interest of a defendant. The judgment decides the rights of all who may have an interest in the property.<sup>71</sup> Upon a judicial sale following a judgment *in rem*, the new purchaser is given a title free from all prior claims,<sup>72</sup> whereas in an *in personam* action, the plaintiff takes only the interest of the defendant owner. However, the drastic nature of admiralty arrest does not justify withholding from maritime property owners minimal due process protection against unwarranted or mistaken deprivation of their property.

The substantive differences between admiralty arrest and nonadmiralty attachment do not outweigh the more important procedural similarities. In both situations a property owner is deprived of his property by summary and *ex parte* seizure. Whether the action is *in personam* or *in rem*, the owner is subject to the danger of an unwarranted or mistaken deprivation of property. Both the admiralty arrest and the state attachment statutes are primarily designed to provide security for a plaintiff's underlying claim. Indeed, the interest of an admiralty plaintiff is especially similar to the interests protected by the sequestration statute upheld in *Mitchell v. W. T. Grant Co.*<sup>73</sup> In both cases, if immediate action is not taken to seize the defendant's property, the property may be removed from the court's jurisdiction, thereby defeating the plaintiff's claim. These proce-

---

67. G. GILMORE & C. BLACK, *supra* note 14, § 9-5 to -16.

68. 1977 A.M.C. at 1721-24.

69. *Senner*, 485 F. Supp. at 294.

70. Batiza & Partridge, *supra* note 2, at 239.

71. *Rounds v. Cloverport Foundry & Mach. Co.*, 237 U.S. 303, 306 (1915).

72. *The TRENTON*, 4 F. 657 (E.D. Mich. 1880).

73. 416 U.S. at 604-11; *Senner*, 485 F. Supp. at 293-94.

dural similarities support the *Alyeska* court's holding that the *Sniadach* and *Fuentes* standards should apply to admiralty *in rem* arrests.

The existence of the plaintiff's maritime lien in an admiralty action *in rem* does not require a lowered due process standard for maritime property owners. The guarantee of judicial review and a prompt postseizure hearing would not interfere with the effective enforcement of a maritime lien through *in rem* arrest. Nor would the substantive rights of the plaintiff be changed by amendment of the arrest procedures.

The *Alyeska* court correctly applied the Supreme Court's due process standards to maritime property owners. The present admiralty arrest procedures do not meet these standards and consequently do not protect the maritime owner from unwarranted deprivations of his property. In order to protect both the maritime property holder and maritime plaintiff, the Supplemental Rules of the Federal Rules of Civil Procedure should be amended to require preseizure judicial participation in the property's arrest, and to guarantee an immediate postseizure hearing to owners of seized maritime property.

*Lance B. Nelson*