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Hon Sir Anthony Mason AC KBE

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ADMIRALTY AND INSOLVENCY COURTS IN CONFLICT

John Levingston

The admiralty and insolvency courts in bankruptcy and corporate liquidation come into conflict due to the payment priority given in admiralty to maritime lienors and claimants with a statutory right of action as a maritime claim against the ship or other property known as the "res", entitling them to commence admiralty proceedings in rem for the arrest of the res as security for their claim. A trustee in bankruptcy and company liquidator have statutory power to gather the assets for payment to all creditors and often seek to get possession of the admiralty res, the security provided for release from arrest, or the res sale fund administered by the admiralty court. The conflict has to be resolved in favour of admiralty as only the admiralty court can sell the res with clear title. The disadvantage for insolvency creditors is that the admiralty priorities are different, even placing secured creditors after admiralty lienors such as wages, which in Insolvency are with unsecured creditors. 849

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