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WORLD MARITIME UNIVERSITY

Dalian, China

**RELATIONSHIPS BETWEEN REGISTRATION,
DELIVERY AND TRANSFER OF SHIP
OWNERSHIP**

By

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China

A research paper submitted to the World Maritime University in partial fulfillment
of the requirements for the award of the degree of

MASTER OF SCIENCE

(MARITIME SAFETY AND ENVIRONMENTAL ANAGEMENT)

2013

Declaration

I certify that all the materials in this research paper that are not my own work have been identified, and that no materials are included for which a degree has previously been conferred on me.

The contents of this research paper reflect my own personal views, and are not necessarily endorsed by the University.

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Date: July 18, 2013

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Acknowledgment

This research paper was accomplished as a part of my studies to apply for the master's degree in Maritime Safety and Environmental Management at WMU, which was taught at DMU. These studies would not have been successful without the generous support of a number of people and organizations to which I am most grateful.

First of all, I would like to deliver my heartfelt thanks to Fujian MSA for giving me the opportunity to attend this programme. I wish to express my profound gratitude to my leaders and colleagues in Fujian MSA and Ningde MSA, for their great support and encouragement during the period of studying in Dalian.

In addition, I want to express my thanks to my supervisor Guo Ping, professor of Dalian Maritime University. Her valuable guidance helps me to overcome many difficulties which I encountered during the preparation of this research paper. I would also like to convey my sincere thanks to all the professors who attend this MSEM programme. Their professional lectures have not only considerably improved my knowledge but also benefited this research paper greatly.

Last but not least, I want to express my deepest appreciation to my dear families and friends, who have been continually giving me encouragement and strength to persevere.

Thank you all very much!

Abstract

Title of Research paper: **Relationships between registration 、
delivery and transfer of ship ownership**

Degree: **MSc**

This research paper is a study to the principle that delivery takes precedence over registration as the judgment standard of owning of ship title, which is stipulated in Interpretation of the Supreme People's Court on the Relevant Issues concerning the Application of Law for Trying Cases on Dispute over Sales Contracts in China.

With the basis of the “Bineta” case having happened in Britain, from perspective of legislation, comparing and discussing different legislation modes of British law and Chinese law, the paper gives introduction to the basis of the judgment to the transfer of ownership and to the efficacy of registration of transfer of ship title of the two countries. Then, from the practical perspectives of ship delivery, registration and maritime trials, it gives further explanation to illustrate that, in Chinese judicial adjudication, the principle that delivery takes precedence over registration as the judgment standard of ownership is irrational, and in other words, the principle that registration is prior to delivery is feasible, but except fraud registration in trial of cases.

Key words: The transfer of ship title, Principle, Registration, Delivery

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Chapter 1 Introduction

1.1 Case study

Lloyd's Rep. 419:

Motor yacht Bineta was sold by her registered owner S. to G., in June, 1963. G. was registered as her owner on June 4, 1963. G. defaulted on payments and S. retained possession of Bineta in exercise of her unpaid seller's lien. In March, 1965, S. sold Bineta to plaintiff, and S. executed a bill of sale although not the registered owner. Plaintiff sought declaration that he was owner of Bineta and was entitled to be registered as her owner in place of G., alleging that S. had power to resell vessel under Sale of Goods Act, 1893, Sect. 48 (2), as an unpaid seller and could vest good title in plaintiff (*The "Bineta"*, 1966).

Mr. justice Brandon Held that:

Plaintiff acquired good title from bill of sale; that he was the owner of Bineta; and that he was entitled to be registered as owner under the Merchant Shipping Act, 1894. I shall pronounce the plaintiff to be the lawful owner of the Bineta and entitled to be registered as the sole owner thereof (*The "Bineta"*, 1966).

1.2 Background

The “Bineta” case happened in Britain, and the result of this trial indicates that efficacy of delivery of bill of sale is prior to effectiveness of registration. In China, the same kind of cases occur frequently. In July 1, 2012, Interpretation of the Supreme People's Court on the Relevant Issues concerning the Application of Law for Trying Cases on Dispute over Sales Contracts (hereinafter referred to as Interpretation of Sales Contracts) which clarifies the final standpoints and reasons of the Supreme People’s Court as the highest judicial organ to argumentative questions was put into force, Item 1 (4) of Article 10 of which stipulates:

The sellers deliver the subject matter to one of the buyers, and also apply for registration of the transfer of ownership for other buyers. If the buyers having taken delivery of the ship apply for registration of subject matter in the name of their own, People's court should support (Interpretation of the Supreme People's Court on the Relevant Issues concerning the Application of Law for Trying Cases on Dispute over Sales Contracts, 2012).

Interpretation of Sales Contracts makes detailed provisions on the problem of who should own the title of the ship when it is sold for several times. It adopts the principle that delivery takes precedence over registration as the judgment standard of ownership, confirming that registered shipowners can not act against the buyers who have taken delivery of the ship when it is sold for several times. If the Chinese law is applied to the “Bineta” Case, the trial result will be the same as in Britain in the

situation that the two states have different legislative modes of the change of real right used to decide the basis of the judgment to the transfer of ownership and to confirm the efficacy of registration of transfer of ownership of a ship. Interpretation of Sales Contracts provides a standard to determine the title of a ship when multiple tradings to the same ship happen. It is certainly conducive to the court to deal with such disputes. But it may not be unable to achieve the objectives of maintaining principle of good faith, preventing a boat from being sold twice which the drafters expect to achieve. In addition, it will result in undue restrictions to free trade, increasing transaction costs and it will be harmful to transaction security to Chinese shipowners in international ship transaction.

1.3 Research methodology and purpose of the study

The paper makes use of comparative study methods from legislative aspect, choosing English law which have got the most universal application in international shipping industry¹ as comparison object with Chinese law. Then from practical perspective, it gives the further explanation to support the view.

It aims at explaining that the principle that delivery takes precedence over registration as the judgment standard of ownership is irrational, and it is not conducive to protect the benefit of Chinese shipowners in the international trial and maintain the ship market order in the practice.

¹ Today, shipping contracts signed by businessmen, such as ship sales contracts, shipbuilding contracts have such basic features: Entering into a contract in English; English law is applicable law of contract; London arbitration is the way to resolve dispute. English law in the international shipping industry which has been the most commonly applied is an indisputable matter.

1.4 Layout of the paper

In addition to the Introduction and the Conclusion, the thesis consists of three chapters. Chapter 2 gives brief introduction to the concept and causes of the transfer of ship title, and discusses the real right alternation modes adopted in Britain and China from the aspect of contact actions. Chapter 3 introduces different bases of the judgment to the transfer of ship ownership in British law and Chinese law. Chapter 4 gives introduction to different efficacies of registration of transfer of ship title to British law and Chinese law. The above two chapters are from legislative aspects. Chapter 5 from the practical perspectives, declares that the principle that delivery takes precedence over registration as the judgment standard of ship ownership is irrational, to the contrary, that registration is prior to delivery is feasible, but except fraud registration.

Chapter 2 Transfer of ship title

2.1 Concept

Transfer of ownership of a ship refers to a situation in which the ownership of original owners is eliminated and successors acquire it upon the title of existing vessels, based on some reasons.

2.2 Causes

In private law, the main reasons for the transfer of ship title are ship transaction, reciprocity, gift, abandonment of insurance and other specific forms, under which the transfer of ship title can not be realized until an agreement is reached by involved parties. And such transfer caused by contracts are the core issue of study on real right changes under the Real Right Law (Ge, 2012, p.15).

This paper focuses on the transaction of second-hand vessels causing the transfer of

ship title resulting from contract actions rather than others based on the “Bineta” case.

2.3 Relationships between contract actions and the transfer of ship title--legislation mode

Whether contract actions by the parties can directly result in the transfer of ship title, that is ship real right changes. It is rather different under different real right alteration legislation modes.

2.3.1 In continental law system

There are three representative real right change patterns: Intentionalism, Real Right Externalism, Creditor’s Rights Externalism in continental law system.

Firstly, Intentionalism mode refers to the mode in which the changes of real right can come into effect only through the manifestations of intention to creditor’s rights by involved parties. In this legislative pattern, contract of credit itself can lead to the transfer of ownership, while other elements are not required. Take sales contracts for example. The title of subject matter totally depends on the free intention of parties on the basis of contracts, irrespective of other elements such as delivery and registration. The Civil Code of France adopts this model, which can be found in Article 711, stipulating that “Ownership in goods is acquired and transmitted by succession, by donation between living parties, or by will and by the effect of obligations”(French Civil Code, n.d.). In other words, it sees real right alternations

as the result of creditor's rights, and does not recognize the real right action. The French Civil Code takes the pure intentionalism legislative model in fact. Article 1583 of the French Civil Code provides that:

It is complete between the parties, and the property is acquired in law by the purchaser with regard to the seller, as soon as the thing and the price are agreed on, though the thing have not been delivered nor the price paid (French Civil Code, n.d.).

Secondly, Real Right Externalism mode means real rights changes will take legal effect not only needing the intention of obligatory rights, but also the independent intention of real rights with the purpose of establishment and transfer of title, and demanding registration or delivery or other publicity forms as manifestation of reaching intension of real rights. German Civil Law adopts this model.

Section 873 -- "consensus plus registration"

(1) The transfer of the ownership of a plot of land, the encumbrance of a plot of land with a right and the transfer or encumbrance of such a right require agreement between the person entitled and the other person on the occurrence of the change of rights and the registration of the change of rights in the Land Register, except insofar as otherwise provided by law (German Civil Code BGB, n.d.) .

Section 929 --- "consensus plus delivery"

For the transfer of the ownership of a movable thing, it is necessary that the owner delivers the thing to the acquirer and both agree that ownership is to pass. If the acquirer is in possession of the thing, agreement on the transfer of the ownership suffices (German Civil Code BGB, n.d.).

Thirdly, Creditor's Rights Externalism mode, also called eclecticism, the intermediate state of Intentionalism mode and Externalism mode, means real right changes will take legal effect with the manifestations of intension of obligatory rights, as well as specific legal form-- registration or delivery. This legislative pattern does not acknowledge the existence of the intention of real rights, regarding contract for credit as intrinsic motivation and root cause to the transfer of title, just still needing some form, e.g. registration or delivery, to realize the chang of real right. China adopts this mode, we will give introduction in chapter 2.5.

So to ships, if under the Intentionalism legislative model, the transfer of ship title can come into effect solely by the manifestations of intention of the relevant parties, that is to say that contract actions by the parties can directly result in the transfer of ship title. However, under the Externalism mode, the transfer of ship title will take effect, not only through contracting by the relevant parties, but also through registration or delivery.

2.3.2 In Anglo-American law system

And there is another real right change pattern to immovables in Anglo-American law system---Deed Deliverism.

Although there is no systematic theory of property law, the issues about transfer of property rights also exist in practice. Therefore they have rules to resolve the problem. So it adopts Deed Deliverism legislative model to immovables, and Intentionalism mode to movables which will be discussed in chapter 2.4 (Zhu, 2010, p.13).

There are two steps in transaction of immovables, making the sales contracts and delivering the deed in Anglo-American law. And in German law, there are two steps too. They both think sales contract itself cannot generate the effect to transfer of property rights. It requires another act called juristic act of real right in German law, and deed delivery in Anglo-American law. Juristic act of real right needs some formal requirements (delivery or registration), while deed delivery itself has the effect of transfer of ownership (Liu, 2008, p.12).

To Deed Deliverism model, there are often two steps. The first is entering into a deed on immovable. The second is delivery of the deed, which is the final legal document to the transfer of real estate, made by transferors in written form, recording the main content of the contract (Zhu, 2010, p.13). Once delivery of deed from transferors to the transferees is made, the transfer of rights will be completed to immovables.

But what is the relationship between Deed Deliverism legislation model and the

transfer of ship title? To address this question, we will proceed the discussion in British law.

2.4 Real right alternation mode in Britain-- to ships

In Britain, Intentionalism mode is applicable. A ship is a chattel and it is also considered as part of goods. Hence, the principal legislations such as the Sale of Goods Act 1979, will be the applicable to English laws (Koh, n.d., p.1).

17 Property passes when intended to pass.

(1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred;

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case (Sale of Goods Act ,1979).

18 Rules for ascertaining intention.

Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

Rule 1.—Where there is an unconditional contract for the sale of specific goods

in a deliverable state the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery, or both, be postponed;

Rule 2.—Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods, for the purpose of putting them in a deliverable state, the property does not pass until such thing to be done, and the buyer has notice thereof (Sale of Goods Act ,1979).

Scholar Michael C. thought: Under English law, the key of the transfer of property rights is the intention of the parties. As long as the two parties have reached an agreement, the actual delivery of goods does not affect the transfer of property rights. However, delivery is only the transfer of possession not the title (As cited in Liu, 2008, p.11).

Lawson and Rudden (1982/1998), British scholars claimed:

When the parties intend to transfer the property, the title of ascertained goods are transferred from the sellers to the buyers at once, even if the goods are still held by the sellers, but it is only limited to sellers and buyers. Once the goods is delivered to the buyers, they are actually in the possession of the buyers, even without delivery, it will be the same result, but the premise is that the information of the occurrence of the trading can be known by the people who

still intend to buy the same goods from the buyers subsequently. But it is inconvenient in practice (p.65).

So once the parties have the intention to transfer the title of the goods, it will happen immediately, and only this transference has effect between the parties. So this legislation model is similar to that of France--Intentionalism mode (Liu, 2008, p.11).

But the author thinks, another mode that coexists is similar to Deed Deliverism model to the transfer of second-hand ship title. Under Intentionalism model, the time of transfer of ownership is blurred. "Intention" ultimately is still a way of thinking in the human brain, purpose, although you can determine concerned cognitive rules with legal form, many other uncertainties have not disappeared. Under the Intentionalism model, when handling the cases, the judges often have to speculate the inner meaning of the parties, which greatly increases the legal uncertainty (Dong, 2012, p.14). So slight adjustment is given to Intentionalism legislation: Specific time of transfer of ownership, in principle, should be at the time of delivery. When the parties make special indications, the transfer of ownership will be in accordance with expression (Guo, 2002, p.10). From section24 of Merchant shipping Act 1894² in Britain, we can conclude that title of a ship only passes when the bill of sale which will be discussed in Chapter 3.1.1 is executed and transferred. The author thinks this legislative model is similar to Deed Deliverism model. According to Law of Property Act 1925, s.52: "(1) All conveyances of land or of any interest therein are void for the purpose of conveying or creating a legal

² See chapter 3.1.1.1

estate unless made by deed (Law of Property Act, 1925).” And the British pay great attention to the deed documents which are classified as solemn form with a higher nature distinguished from the common documents, such as a simple contract (Yang, 2004, p.54). So in second-hand ships transaction, the bills of sale are made in the form of deed format. So it is almost the same as Deed Deliverism model.

2.5 Real right alternation mode in China-- to ships

It is generally accepted that the legislative model of the transfer of ship ownership of Chinese ships is Creditor's Rights Externalism mode. Contracts of credit can cause the transfer of ownership. Although delivery or registration forms are needed, they are just the action to perform contracts for credit, not separate juristic act of real right. If sales contract or other contracts for credit are announced invalid or repealed, the assignees should return the ship and recover its original state, in no event shall they get the ship title by delivery or registration. Maritime Code of the People's Republic of China does not stipulate the mode of the transfer of ship ownership, so it should keep consistent with the change mode of real right of creditor's rights externalism in Civil Law. Transfer of ownership of the ship does not require separate intention of real right, and only the contract of credit is the reason for the transfer. And it also needs to have some external manifestation--delivery, which will be discussed in next chapter.

2.6 Comment

So the legislative model of the transfer of ship title in China is rather different from

that of Britain. In China, Creditor's Rights Externalism mode is applied, while Britain adopts Intentionalism mode. But at the same time bills of sale are document of higher status, if they exist in the transaction, so the author thinks that the real right change model similar to Deed Deliverism model coexists in Britain.

Under different legislation modes of the transfer of ship title, the differences and conflicts about the basis of the judgment to the transfer of ownership under the two countries are unavoidable, which will lead to contradiction harming the interests of Chinese shipowners under international transaction. In the following chapter, we will discuss the specific differences and how the Interpretation of Sales Contracts strengthens this adverse situations to Chinese shipowners.

Chapter 3 The basis of the judgment to the transfer of ownership

What is the basis of the judgment to the transfer of ownership, the bill of sale, contract or other external form? Chinese law is rather different from Britain law in this aspect, which directly relates to the crucial issue of when the ship title transfers from the sellers to the buyers. It is different under different real right alteration legislation modes.

3.1 Stipulations under British Law

Under the legislative mode similar to Deed Deliverism model, the delivery of bill of sale will indicate the transfer of ship title. Under Intentionalism mode, the involved parties may agree on the time and conditions to the transfer of ship title in sales contract if without delivery of bill of sale, so the it will subject to agreement.

3.1.1 Bill of sale

3.1.1.1 Sign for the transfer of ship title

We can see that under legislation modes of Britain discussed above, bill of sale is the evidence of transfer of ship ownership. During the legal delivery process, sellers are obliged to transfer the relevant documents to the purchasers, and the bill of sale is the most important one. Furnishing the buyers with the bill of sale as the proof of transferring of the ship title is international practice, which originates from Britain (Liu, 2009, p.22). Merchant Shipping Act 1894 of Britain, section 24:

24 (1) Any transfer of-

(a) a registered ship,or

(b) a share in any such ship,

shall be effected by a bill of sale, unless the transfer will result in majority interest in the ship no longer being owned by persons qualified to be owners of British ships (Merchant Shipping Act, 1894).

The effect of a bill of sale as a document is to give to the holder a legal or equitable right to the property and enable the person to take possession (Diamond, 1960, p402). Contracts of standard form are most widely used in the international community are Norway's format (NSF' 66, NSF' 83, NSF' 87 and NSF' 93), clause 8 of which emphasizes that the bill of sale is used in exchange for payment of purchase of the ship.

3.1.1.2 Delivery time of the bill of sale

Delivery time of the bill of sale is when the ownership of a ship transfers. However, a bill of sale does not necessarily bear the date of delivery because it can be executed “in escrow”, and therefore on its face does not indicate the date on which ownership is transferred (Harwood, 2006, P.281). So the document that should be agreed in advance and signed by both parties at the closing table is called a Protocol of Delivery and Acceptance recording exact time and date of delivery of the vessel (Wasserman, 2008).

It is also common practice for a further protocol of delivery and acceptance to be executed on board the vessel at the time when control is handed over from the seller’s crew to the buyer’s. Generally speaking, this is coordinated so as to be simultaneous with the execution of the protocol of delivery and acceptance at the documentary delivery (Harwood, 2006, P.281).

3.1.2 Contracts of sale and contracts to sell

3.1.2.1 Nature of contracts influence the transfer of ship title

Beginning with the case in 1926 from Lloyd’s Rep.210: Naamlouze Vennootschap Stoomvaart Maatschappij "Vredobert" v. European Shipping Co., Ltd. from the House of Lords of Britain (hereinafter referred to as Vredobert case).

The focus of dispute in this case was whether it was right for the insurance company to pay the European Shipping Co. insurance compensation. The essence of the case was whether the title of the ship had been transferred to Vredobert company, because only by possessing the ownership could he obtain insurance compensation. In the first instance, Vredobert company as plaintiff alleged that the ownership of the ship had been transferred, they was entitled to receive insurance compensation from the policy. They thought from the transaction process and the previous negotiation of the two sides, obviously, the ownership of the ship had been transferred with the entry into force of the contract at September 6, 1921. Plaintiff won its case. Defendant refused to comply and appealed to the Court of Appeal who thought the ownership of the ship did not pass to Vredobert company and reversed judgement of the first instance. So Vredobert company appealed to the House of Lords (of Britain). But House of Lords judged to dismiss the appeal.

Lord Dunedin thought from Lloyd's Rep.212:

The property did not pass on Sept. 6. In other words, using the phraseology of the Sale of Goods Act, I look on this contract as a "contract to sell" and not a "sale." The appellants greatly rely on the word "now," but even as regards the words they are not "now sell," but they are "now to sell," and further indication, which is pointed out by the Sale of Goods Act as having great force in determining whether a contract is a sale or an agreement to sell, is to see whether there remains something to be done. Now, here there was certainly something to be done. There was the creation of a mortgage. Now, a

mortgage meant a binding mortgage that would operate as a mortgage, i.e., that would be something more than a mere personal covenant to pay. That is the essence of a mortgage. Now, the parties knew perfectly well that to enable the purchasers (foreigners) to hold ships, these ships must come off the English register. The mortgages intended must therefore be mortgages effectual under the law of the new flag to which the ships were going to be transferred. I have therefore no hesitation in holding that the property did not pass by the mere execution of the contract of Sept. 6, but that it was meant to pass when the proper and effectual transfer was effectuated by getting the ships off the English register and on the register of the foreign flag. If that be so, the respondents were owners at the time of the loss, and the underwriters properly paid to them. So the appeal should be dismissed (*Naamlooze Vennootschap Stoomvaart Maatschappij "Vredobert" v. European Shipping Co.*, 1926).

From this legal precedent, under British law, the judge decides whether the transfer of ownership of a ship happens on the basis of specific content of sales contract. In most cases, the enforcement of sales contract does not represent the transfer of ship title. In Vredobert case, the judge determined the legal nature of the sales contract of the ship as “contract to sell”, rather than “sale”. So the ownership of the ship would transfer after finishing some follow-up work.

Why is it necessary to judge the legal nature of the contract as a “contract to sell”?

The reason is that under British law ship title can be transferred directly to the buyers when the contract regarded as a “sale” is made and the subject matter is specialized. But there is another type of contract --“contract to sell”. Prior to the transfer of ownership, there must be a lot of work to do as a premise. The Memorandum of Agreement (MOA) in ship transaction generally stipulates that both parties must prepare a large number of files, such as certificate of nationality, classification certificate, bank guarantees, etc. A series of procedures must be followed including paying ship prices, establishing or releasing mortgage, canceling nationality, etc. Because the value of the ship is large, many documents are involved in the transfer, lease and mortgage may be attached, etc., and also there may be some special demands to ship. So a large number of contracts cannot be classified as “sale”, but as “contract to sell”. In this situation, the ownership of the ship can not be directly transferred according to the making of a contract, it will take place at a future time or subject to some condition later to be fulfilled (Yang, 2004, P.61).

3.1.2.2 Date of delivery in contracts to sale

Under Intentionalism legislative model, unless the parties expressly agree that the transfer of ship ownership is ahead of time in the contract, the judge under British law will consider “date of delivery” agreed in a contract as the time of the transfer of ship title.

There is often an agreement of “date of delivery” in the contract. After the contract comes into force, generally there is a lot of work to do for both the buyer and the

seller, as said above, which will greatly affect the transfer of ship title. And a large number of disputes are generated during the period. So the standard form of contracts often have an agreement of “date of delivery”. If they cannot finish the work as said above, the ownership of the ship will not be transferred.

Regarding Vredobert case, the British judge thought that "date of delivery" in the contract is not the effective date of the contract, but the real point to transfer the ownership of the ship. As the judge wrote in the Court Verdict in Lloyd's Rep.212:

Then, taking Clause 6 by itself, I hold that "date of delivery" obviously refers to the date of transfer in Clause. There could be no other date looked at. The appellants tried to say that it meant the date when the ship came into their management under the inchoate charter-party arrangement. Such a contention is, I think, out of the question. If the date of delivery is equivalent to the date of transfer, the ship was lost before the date of the delivery, and the clause ceases to speak. The clause as it stands is quite intelligible. (*Naamlooze Vennootschap Stoomvaart Maatschappij "Vredobert" v. European Shipping Co.*, 1926).

3.1.3 Embodiment in ship registration

The delivery of bill of sale is regarded as a standard for the transfer of ship title rather than sales contracts, which is further embodied in ship registration legislation.

In Britain, materials used to prove the ship title submitted to ship registration authorities for the first registration stipulated in Merchant Shipping (Registration of Ships) Regulations 1993:

In the case of a ship which is not new, and in respect of a ship other than a fishing vessel: (a) a previous bill or bills of sale showing the ownership of the ship for at least 5 years before the application is made, or (b) if the ship has been registered with a full registration at any time within the last 5 years, a bill or bills of sale evidencing all transfers of ownership during the period since it was so registered (Merchant Shipping Regulations, 1993).

So generally, ship registration authorities require bills of sale as proofs of the transfer of ship title rather than contracts.

3.1.4 Comment

In the “Bineta” case, the ship title did not transfer when contract was made. The transfer happened only when the seller delivered the bill of sale to the buyer, although the ownership of the ship was transferred to the buyer according to “contract to sell”. The sale contract generally does not pass the title to the buyers (at least in the case of NSF contract). Technically speaking, it is the delivery of the bill of sale that transfers title to the buyers (Harwood, 2006, P.281). The plaintiff achieved entire ownership because of the delivery of the bill of sale from unpaid

seller. The above statements also indicate that the bill of sale has higher legal status and legal force than sales contract.

Compared with Chinese law, there are no concepts of “contract to sell” and the bill of sale, so it will be regarded as effective sales contract. But in china ,when the sales contract come into force, it will not indicate that the transfer of ship title happens.

3.2 Stipulations under Chinese Law

In China, because of Creditor’s Rights Externalism mode, in addition to sales contract, other external form is needed for the transfer of ship title as said in chapter 2.

3.2.1 Delivery---- criterion for confirming the transfer of ship ownership

Article 7³ in Regulations of Registration of Seagoing Vessel of People’s Republic of China 1986⁴ (Hereinafter referred to as 1986 regulations) demanded that “the transfer of ship ownership took effect when the registration was finished” (Regulations of Registration of Seagoing Vessel of People’s Republic of China, 1986). The provisions pertaining to the transfer of ship ownership in Article 9⁵ of Maritime Code of PRC and Article 5⁶ of Regulations of people’s Republic of China

³ see chapter 4.2.1

⁴ It has been out of date and replaced by Regulations of people’s Republic of China Governing the Registration of Ships 1994

⁵ see chapter 4.2.1

⁶ see chapter 4.2.1

Governing the Registration of Ships 1994 (Hereinafter referred to as 1994 Regulations) are that registration is no longer the requirement of effectiveness of transfer of ownership, but the element against third parties. This change in legislation theoretically distinguishes ships from general real estate in civil law. In practice, the time of the transfer of ship ownership is pushed to delivery and agreement by the parties ruled in Item 2 of Article 72⁷ of General Principles of the Civil Law of PRC and Article 133 of Contract Law of PRC⁸. Therefore, the time of transfer of ownership of a ship is determined according to the contract, firstly, allowing the agreement reached by the involved parties, if there is no agreement, it is subject to the delivery.

In China, when the Real Right Law comes into effect in 2007, the three laws for adjusting property coexist, with the other two being General Principles of the Civil Law of PRC and the Maritime Code of PRC. In China, there are no specific articles showing us the time (or voucher) of the transfer of ship ownership in Maritime Code of PRC. But Item 2 of Article 72 of the General Principles of the Civil Law of the PRC stipulates that:

Property ownership shall not be obtained in violation of the law Unless the law stipulates otherwise or the parties concerned have agreed on other arrangements, the ownership of property obtained by contract or by other lawful means shall be transferred simultaneously with the property itself (General Principles of the

⁷ see the next paragraph

⁸ Title to the subject matter passes at the time of its delivery, except otherwise provided by law or agreed by the parties.

Civil Law of the PRC,1986).

And Article 23 in the subsequent Real Right Law of PRC regards ships as special chattel, prescribing that “unless it is otherwise prescribed by any law, the creation or alienation of the real right of a chattel shall come into effect upon delivery ” (Real Right Law of PRC, 2007).

General Principles of the Civil Law of the PRC was promulgated early in 1986 when Chinese legal profession was inadequate to the research of real right, so it is relatively simple in the provisions in the transfer of ownership, even with no distinction between movables and immovable properties. The purpose of the provision about agreement on exceptions is to avoid affecting changes of property rights by "one size fits all". While the real right law of PRC came into force in 2007, which distinguishes movables from immovable properties, making them applicable to different real right change rules. The provision in Article 23 of Real Right Law of PRC, “Unless it is otherwise prescribed by any law” rather than “Unless the law stipulates otherwise or the parties concerned have agreed on other arrangements,” as said in Item 2 of Article 72 of the General Principles of the Civil Law of the PRC is to ensure certainty of real right change system of chattel and realty, with no optional change by agreement between the parties. And domestic property law expert Wang Liming (2007, p386) also pointed out in his monograph:

“Unless it is otherwise prescribed by any law” in article 23 of real right law of PRC mainly refers to the setting of the Real Right of chattels without delivery such as the mortgage of the chattels and so on, not to include the general regulations in the old law.

Pursuant to the principle that the new law is better than the old, in conclusion, the only criterion of confirming the transfer of ship title is delivery. And according to numerus clausus, the parties concerned cannot reach agreement which is inconsistent with mandatory requirement of existing legislation. The arrangement will not have the force of law when the parties concerned agree that the transfer of ship ownership is not based on delivery.

Thus, in addition to sales contracts, delivery is the essential criterion of confirming the transfer of ship title.

3.2.2 Definition and types of delivery

Delivery is composed of actual delivery and intangible delivery. To actual delivery, the sellers deliver the ship to buyers themselves or the person designated by buyers directly. Ordinary merchant ship generally require more than twenty crew members. So generally new crew members hired by the buyers replace the original ones on the ship. Old crew members deliver the ship to the new ones through formalities of handover. Obviously, the old crew members can be hired by the buyers directly. However, the sellers and the buyers will together announce that the buyers will be the new owner of the ship to realize delivery. Intangible delivery can be divided into simple delivery, indication delivery, constitutum possessorium and so on. By simple delivery, in case that the transferee has legally possessed the chattel prior to the establishment or alienation of a chattel's real right, the real right shall come into effect upon the effectiveness of the legal act. By indication delivery, in case a third

party has legally possessed the chattel prior to the establishment or alienation of a chattel's real right, the transferor will request the third party to return the original object. And by *constitutum possessorium*, in case both parties agree to let the transferor continuously possess the chattel when the real right of a chattel is alienated, the real right shall go into effect upon the effectiveness of the agreement.

3.2.3 Delivery time

The delivery of a ship is regarded as a demarcation point of the time of the transfer of ship title.

Deciding when to delivery under Chinese law, we can give specific explanation to the word “delivery”. Take *Vredobert* case for example. Since the plaintiff has already leased the ship, under his possession, the key is whether simple delivery is applicable. If so, the ownership of the ship has been transferred. The author thinks it depends on whether there is preparatory work for simple delivery. That is to say, for simple delivery, if the ship has been rented to a buyer before, there will be no special preparatory work to do. But for a ship with mortgage, or with a need to change nationality or with other complex work, simple delivery is not fit with only possession, because preparatory work is the premise to the delivery. Only possessing can not be regarded as simple delivery. So deciding the time of the transfer of ship title can depend on the type of delivery.

Generally the parties will sign a delivery document to confirm the transfer of the title

on or after the date of delivery in ship transaction, which definitely records transferring time of ship title.

3.3 Embodiment in ship registration

Article 13 of 1994 Regulations stipulates: “For the registration of ownership of a ship purchased, the following documents shall be submitted: (1) Seller's invoice, sales contract and delivery document...(Regulations of people’s Republic of China Governing the Registration of Ships, 1994)”. So when the ship owners apply for registration of the transfer of ownership for a second-hand ship to the registration authorities⁹, they should submit sales contracts and delivery documents as the proof of the transfer of ship title.

3.4 Comment

So, sales contract and delivery are both demanded by transfer of ownership of a ship in China, while bill of sale with higher legal force is needed in England. Sales contract just affects the transfer of ownership.

No matter in China or in England, in the ship trading practice, there is a period of time between entering into a sales contract by the parties and transfer of ship ownership, which can be elongated because of incomplete files or installment payments instead of cash immediately or other reasons. During this period, due to

⁹ Registration authorities generally carry on formality examination to the materials including delivery document used to apply registration. They do not check the authenticity of the application materials, liability for which will be undertaken by the applicants.

ship price increasing or other reasons, the sellers are very likely to sell the same ship to the second buyers. From national conditions of China, not demanding the premise of the transfer of bill of sale as the symbol of the transfer of ship ownership may not damage the interests of Chinese sellers, but may be dangerous to buyers. Because sellers of other countries may not issue bill of sale to Chinese buyers, they could continue to exercise ship title by possessing or transferring the bill of sale. So when the ship price increases, the sellers may resell the ship which is not delivered to the Chinese buyers to other buyers with bill of sale or raise price to threaten Chinese buyers to come up with additional ship price. Even if Chinese buyers complete the registration of ship title, whether according to Item 1(4) of Article 10 of Interpretation of Sales Contracts of China or the criterion of British law reflected by the “Bineta” case, Chinese buyers may stay in a passive position. Interpretation of Sales Contracts of China not only fails to provide a legal remedy, but strengthens unfavorable conditions to Chinese buyers who may suffer a great deal in the international ship trade. And in China, the adjudication does not conform to efficacy reflected by registration of transfer of ship ownership.

Chapter 4 Efficacy of registration of transfer of ownership of a ship

Transfer of ship title should be manifested in a certain way to make the public know. China and England both adopt registration as a publicity method. Because of different legislative models, the effect of registration is different, which will have impact on the question of the owning of ship title and the efficacy to the third parties.

There are three kinds of legislation models around the world concerning efficacy of registration of transfer of ship title. They are as follows:

(1) Registration effectiveness: Registration generates the legal effect of the transfer of ownership. If there is a lack of registration, only the credit and debt relationship exists among parties, while the title does not transfer.

(2) Registration antagonism: Transfer of ownership of the ship occurs according to the intention of the parties. Effect of registration is against third parties. The legislation is adopted by most countries.

(3) Registration is neither effectiveness element nor antagonism element, just with the function to make it known to the public that the transfer of the ship ownership. It mainly exists in the legislative model of Anglo-American law system (Guo, 2002, P18).

4.1 Efficacy of registration of transfer of ship ownership under British law

4.1.1 The choice of legislation model

As mentioned above, England adopts the third legislation model, in which registration is neither effectiveness element nor antagonism element, just with the function to release the information of the transfer of the ownership of a ship to the public. Although registration is the proof of ship ownership, but it is not unquestionable. The “Bineta” case tells us that registration itself is not an absolute proof of ownership. If there is evidence with higher efficacy(e.g. Bill of sale), it may be overthrown.

4.1.2 Efficacy of registration

Let's look at the effectiveness of registration of transfer of ship ownership under British law. In the “Bineta” case, the judge denied ownership of the registered owner, and supported the sale by unpaid seller, so the court is more concerned about whether the transfer of ownership of the ship is validly established in accordance with relevant laws and agreement between the parties, rather than the effectiveness derived from registration.

Under British law, registration is only prima facie evidence of ship ownership, and it can not change the efficacy resulting from substantive transactions. So rights not actually existing will not exist because of the registration, and an invalid sales contract will not have effect even with registration. If the buyer obtains the ownership by lawful means, even if without registration, the seller will lose their ownership.

4.2 Efficacy of registration of transfer of ship ownership under Chinese law

4.2.1 The choice of legislation model

Legislation model of registration of the transfer of ownership of a ship in China is from registration antagonism to registration effectiveness, then to registration antagonism. Article 8 of Rules of Registration of Vessels issued in 1960¹⁰ stipulated that “the acquisition, change or extinction of the ownership of a ship will be effective against a third party when the registration is finished (Rules of Registration of Vessels, 1960)”, which focuses on the legal relationship between registration and third parties, belonging to registration antagonism. Article 7 of 1986 Regulations¹¹ highlighted legal status of the ship treated as the real estate, stating that “the acquisition, change or extinction of the ownership, mortgage rights, bareboat charter rights shall be registered which taking effect after the completion of the registration.” It is regarded as registration effectiveness. Article 5 in 1994 Regulations stipulates:

¹⁰ It has been out of date

¹¹ It has been out of date

The acquisition, transference or extinction of the ownership of a ship shall be registered at the Ship Registration Administration; no acquisition, transference or extinction of the ship's ownership shall act against a third party unless registered. Where a ship is jointly owned by two or more legal persons or individuals, the joint ownership thereof shall be registered at the Ship Registration Administration. The joint ownership of the ship shall not act against a third Party unless registered (Regulations of people's Republic of China Governing the Registration of Ships, 1994).

Article 9 of Maritime Code provides that:

The acquisition, transference or extinction of the ownership of a ship shall be registered at the ship registration authorities; no acquisition, transference or extinction of the ship's ownership shall act against a third party unless registered. The transference of the ownership of a ship shall be made by a contract in writing (Maritime Code of the PRC 1993).

And article 24 in Real Right Law of PRC demands: "The creation, alteration, alienation or termination of the real right of any vessel, aircraft or motor vehicle and so on may not challenge any bona fide third party if it is not registered" (Real Right Law of PRC, 2007).

So now in China, the legislative model of the registration of transfer of ship ownership is registration antagonism.

4.2.2 Legislation comparison

Comparing the stipulations in article 9 of Maritime Code of PRC and article 24 of Real Right Law of PRC, we find the latter one adds restriction to third parties who should be bona fide. Interpretation of Sales Contracts, based on Real Right Law of PRC, gives stricter limitation to the words“bona fide”.

There are two kinds of understanding about article 24 in Real Right Law of PRC.

The first kind of understanding is accepted by most people in marine judicial practice. The buyers, if not carrying out registration, are not entitled to challenge any bona fide third person. The scope of bona fide third parties include not only other buyers of the same ship, but also any bona fide creditors. That is to say, if not presumed to be malicious, any third person will be presumed to be bona fide, and having reasons to believe that ownership of the ship belongs to registered owners. According to this understanding, it is relatively easy to demarcation. The buyers have the right to claim the ownership of the ship, just depending on registration. They do not need to provide evidence to prove whether the source of their rights are in good faith, unless proved not in good faith by opposite sides. Claiming to be the shipowner, they just need to provide proof of registration of ships (except affiliation relationship and joint ownership).

The second kind of understanding is also the view suggested by Interpretation of Sales Contracts. The definition of bona fide must be strictly treated. Buyers who do not take delivery of the ship, can not be treated as bona fide, because they do not check whether the ship has been sold to others. Viewing whether having taken delivery as a standard of confirming whether the buyers are bona fide when a ship has been sold several times, is worthwhile to discuss from the aspect of legislative intent.

So the provisions about the transfer of ship ownership are various in Maritime Code of PRC, Real Right Law of PRC and Interpretation of Sales Contracts which is although on the grounds of Real Right Law of PRC, but not totally the same. Real Right Law of PRC is basic law, while Maritime Code of PRC is classified as *ad hoc* civil law. Interpretation of Sales Contracts is belonged to judicial interpretation, and its power of interpretation is authorized by Standing Committee of the National People's Congress (Resolution on strengthening the legal interpretation work, 1981), so it should has the same effect with the law. How to apply them will become a controversial issue in trial practice.

But the author thinks that stipulations about acting against a third party in Maritime Code of PRC classified as *ad hoc* civil law should be firstly considered, which will be discussed next.

4.2.3 Efficacy of registration

4.2.3.1 The rivalry efficacy of ship registration--article 9 of Maritime Code

From the statement “no acquisition, transference or extinction of the ship’s ownership shall act against a third party unless registered (Maritime Code of PRC, 1993)” from provisions in article 9 of Maritime Code, we can at least draw the following conclusions.

Firstly, if the transferors have delivered a ship to the assignees, and the assignees have occupied the vessel under sales contract, even though new title is not registered, the ship ownership has shifted between the parties. Assignees obtain ship ownership and the corresponding claims of confirmation of ship title, the recovery of ship to its original state, the return ship and so on, and the transferors lose above rights at the same time. As soon as the ship is delivered, transfer of ownership takes effect between the parties who will be bound by the transference in handling mutual relationships.

Secondly, under the condition that the transfer of ship ownership has been registered, any third party is not entitled to claim the rights to new registered shipowners.

There is a common situation that a ship is sold twice in the trading of second-hand vessels. The transferors who are the registered owner signed a contract with transferees for the sale of the ship. But before applying for registration of the transfer of the ownership, the transferors sold the ship to the second buyers, and carried out the registration of the transfer of the ship ownership. In this situation, the second buyers become the registered owners of this ship and get the efficacy

against the first buyers. The first buyers are not entitled to claim the rights to the second buyers who are new registered shipowners, but have the right to hold the sellers responsible for the violation of the agreement (Lan, 2007, P.14).

4.2.3.2 In full force

According to article 23 of real right law of PRC, “the creation or alienation of the real right of a chattel shall come into effect upon delivery.” The effect of changes in real rights is in full force. So the obligees have complete domination and exclusive effect *in rem*. But to the ship, although delivery is an effective element of the change of real right, the so-called “effective” is confined to the parties. The buyers get the ownership but do not apply for registration, so it may not challenge any bona fide third party. So they get incomplete property rights, the efficacy of which is restrained.

That the change of real right of a ship cannot challenge any bona fide third party if it is not registered is expressly provided in article 24 of Real Right Law of PRC. That is to say, the effectiveness of the ownership after registration will be stronger than the effectiveness prior to registration. Ownership has exclusivity and is complete after registration.

4.3 Comment

So, in summary, to the “Bineta” case, if under Chinese law, S. delivered the ship to D., but without registration, so the effect of the transfer of ownership only existed

between S. and D. According to article 9 of Maritime Law of PRC, D. could not challenge the ownership of G. as the third party, so D. had no rights to claim ownership to G. And if G. has applied for registration, the real right he got was complete real right in full force. So, in this case, G. not D. should get the ownership of Bineta ship. By contrast, under British law, registration has no antagonism efficacy, so the result is opposite.

Furthermore, the foreign sellers may resell the the same ship to others by the bill of sale, which may result in a great loss suffered by Chinese buyers. But article 9 of Maritime Code of PRC provide legal remedies. If Chinese buyers get the ownership in legal ways, even having not registered, the sellers will lose his title to the ship who may still keep the bill of sale. However, the legal force of pre-existing documents of title will become null and void, and this fact will be sufficient as an applicable defense. So the sellers cannot resell the ship, and if they do so, the buyers may claim the second ship sales contract invalid.

So the judgment criterion of ownership that delivery is prior to registration stipulated in Interpretation of Sales Contracts is really inappropriate. According to different legislation models of efficacy of registration of transfer of ship title, it is really unreasonable to get the same conclusion to the Bineta case under Chinese law and British law. In international maritime trials, whether Chinese law or British law are applied or not will greatly weaken defense effect for Chinese shipowners. And this will result in conflicts with the above-mentioned provisions in Maritime Code of PRC. All the above discussions are based on perspective of legislation. Then the author will give further explanation from the perspective of practice.

Chapter 5 The relationship between registration and delivery

5.1 Registration is prior to delivery

5.1.1 From practical perspective of ship delivery

A ship bought and sold for several times can be delivered repeatedly. Under the situation of *constitutum possessorium*, the sellers who can make use of the time lag when the shipowners have not been changed to others practice reality delivery or other delivery. Furthermore, under indication delivery, if the sellers conceal the information, they sign a contract for the sale with bareboat charterers or ship managers who actually possess the ship, so there will be contradiction of coexistence of simple delivery and indication delivery, and the buyers are bound not to be able to take delivery of the ship from third parties under indication delivery case. So for the ship, the particular chattel, if not to publicize its title with distinguishing way which is different from general chattels, it is extremely difficult to discern whether the sellers possess the ownership. Therefore, with whether taking delivery of a ship as the criterion to judge whether the buyers are *bona fide* which is the view suggested by Interpretation of Sales Contracts, it is easy to make chances for selling a ship for

several times by sellers with ulterior motive. It is not conducive to maintain normal order to shipping market.

If one of the former buyers who have taken delivery of the ship as sellers resell it to the buyers and finished the delivery, at this situation, whether the buyers can act against the former buyers who have made registration of the ownership of the ship but not have taken delivery of it. If following the viewpoint of Interpretation of Sales Contracts, it will inevitably results in chaos of ship trading.

5.1.2 From practical perspective of registration

On the basis of item 1(4) of article 10 of Interpretation of Sales Contracts, the effectiveness of delivery is stronger than registration, so it is bound to threaten the safety of transactions. To the “Bineta” case, S. and G. had entered into a contract for the sale, and finished registration without delivery, it was entirely possible for D. to know that B was the owner of the ship by referring to register of ships which was open to the public. Therefore, it was impossible for D. to be a bona fide third party in any case. Even if he had taken delivery of the Bineta ship, he should not get special protection. So the provision of item 1(4) of article 10 of Interpretation of Sales Contracts is not conducive to the maintenance of security of transactions, and to the protection of bona fide parties. It is in violation of Article 24 of the Real Right Law of PRC as well. Direct consequence is that the parties pay more attention to the delivery and ignore registration when the change of ship title happens.

The logical conclusion drawn from Item 1(4) of Article 10 of Interpretation of Sales Contracts is that, once registered, the ownership cannot challenge the title of the party who has taken delivery of the ship. Therefore, it will be a waste of time and money to make registration. Even the party who has obtained the title due to the delivery, would consider that there is no need to apply for registration of transfer of ownership of the ship. On the one hand, the drafters thought that the effectiveness of registration was lower than the delivery, but on the other hand, they formulated the provision that the buyers having taken delivery of the ship may apply for registration in the name of their own. It obviously indicates that they recognize the strong effectiveness of public summons and public trust of register of ships. Such provisions are obviously contradictory. The reason for provisions of correction of the registration and dissidence registration in Article 19 of Real Right Law of PRC¹² is that real property register has strong legal force, including real right alterations efficacy, presumption efficacy and public confidence efficacy. Since the effectiveness of that registration is considered to be lower by Interpretation of Sales Contracts, it is not necessary to apply correction of the registration and dissidence registration for the buyers having taken delivery of the ship.

¹² Article 19 In case any right holder or interested party holds that there is anything wrong in any item recorded in the realty register, it/he may apply for a correction of the registration. The registration organ shall revise the registration accordingly, in case the holder recorded in the realty register agrees to revise the registration in written form or there is evidence to prove that the registration is wrong. The interested party may apply for dissidence registration, in case the holder recorded in the realty register does not agree to the alteration. Where the registration organ grants the dissidence registration but the applicant fails to lodge an action within 15 days as of the date of dissidence registration, the dissidence registration shall lose its effect. In case the dissidence registration is improper and bring into damages to the right holder, the holder may require the applicant to compensate for damages.

5.1.3 From practical perspective of maritime trials

5.1.3.1 From the rules and practice of arresting ships

Article 23 of Special Maritime Procedure Law of the People's Republic of China:

If any of the following circumstances exists, a maritime court may arrest the involved ship: (1) where the shipowner is held responsible for a maritime claim and is the owner of the ship when the arrest is executed; (2) where the bareboat charterer of the ship is held responsible for a maritime claim and is the bareboat charterer or the owner of the ship when the arrest is executed; (3) where a maritime claim is entitled to a mortgage of the ship or right of the same nature; (4) where a maritime claim relates to ownership or possession of the ship; or (5) where a maritime claim is entitled to a maritime lien. A maritime court may arrest other ships owned by the shipowner, bareboat charterer, time charterer or voyage charterer who is held responsible for a maritime claim, when the arrest is executed, with the exception of the claims related to ownership or possession of the ship. No ship engaging in military or government duties may be arrested (Special Maritime Procedure Law of the PRC, 1999).

From the above provisions, the mainly basis of arresting a ship is that the shipowners hold responsible for a maritime claim. Whether a specific ship can be arrested mainly depends on the judgment to the main body of whether they are specific shipowners, the standards of which are usually according to the registration of the ship. If the registered owners are held responsible for a maritime claim, then the ship can be arrested, otherwise should not.

If confirming the ownership of the ship with the criterion that delivery is prior to registration, after a ship is arrested, the registered shipowners are entirely possible to release to the ship by the way to counterfeit sales contract with the third parties and then deliver it to them. In this way, the legitimate interests of applicants of demanding arresting ships can not be guaranteed. What's worse, they may bear liability for wrongful arrest.

So, from the rules and practice of arresting ships, it does not work to confirm the ownership of a ship by the criterion in Item 1(4) of Article 10 of Interpretation of Sales Contracts.

5.1.3.2 From practical perspective of the establishment of the mortgage

During the period from finishing delivery to preparing to apply for registration of the transfer of ship title, the sellers can mortgage the ship to the creditors and make mortgage registration. How to deal with the conflict between the buyers who have taken delivery of the ship and the mortgagees. According to Interpretation of Sales Contracts, the mortgagees do not check whether the ship is in the possession of the mortgagor. As a result, they could not be seen as bona fide third party, and could not challenge the buyers who have taken delivery of the ship. Thus, ship finance market is bound to confusion. If the way the sellers deliver their ship is *constitutum possessorium*, the mortgagees can not decide whether the ship is in the possession of the mortgagors at all, which is the same as the situation of indication delivery. Moreover, if the two sides have long-term financing cooperative background, there is

no need for mortgagees to check the ship. And there are no legal requirements that the establishment of ship mortgage is invalid without the check to the ship by mortgagees.

It will conflict with the practice of the establishment of mortgage if using the criterion in Item 1(4) of Article 10 of Interpretation of Sales Contracts to judge the shipowners. And it is not conducive to maintaining the normal order of ship financing.

So confirming the ownership of a ship with the rule that delivery is prior to registration in Interpretation of Sales Contracts will not confirm to practical needs. However, if the registration is the result of false behavior, it is another matter.

5.2 Fraud registration is not prior to delivery

Fraud registration refers to a situation in which the applicants submit fake materials to the ship registration authorities for registration of ship ownership purpose, and the authorities do not find the questions and carry on registration, which lead to the fact that the shipowners recorded in ship register of ships or certificate of ship ownership do not have title to the ship actually. So the question is whether this kind of registration can challenge third parties who have taken delivery of the ship. There is no stipulations in Maritime Code of PRC. According to Chinese traditional viewpoint, even if the registration is fraud, it should be acknowledged. The author thinks that this view is worth discussing.

The registration of transfer of ship title is carried out in accordance with the application of the shipowners. Such registration is not only a declaration of title to the public, but also the public commitment by ship owners to undertake obligations. The author thinks, according to "good faith" principle, shipowners should fulfill commitments. The registered owners can not be on the pretext of fraud registration of transfer of ownership, refusing to recognize their legal obligations and responsibilities stipulated by law. In addition, from another point, after the change or elimination of ownership, if the registered owners don't carry out alternation of registration or deletion of registration, they should continue to fulfill commitments and undertake the due obligations. The author thinks that it has its own truth to determine liability persons according to ship registration which is clearly stipulated in the systems of ship damage compensation and oil pollution damage compensation in relevant international conventions. However, after the compensation by registered owners, it will not affect their right to recover losses from actual responsible. The confirmation of liability according to registration will be conducive to the protection of the interests of the injured party and sanctions against fraud registration.

But, In the trial to a case, the fraud registration can not take precedence over the delivery. According to fraud registration to determine the ownership, it is in violation of the law. Prerequisite for registration is the fact that the applicants obtain the ownership of the ship pursuant to the provisions in Maritime Code of PRC. Only when applicants achieve title, registration authorities will allow them to register, which is stipulated in Maritime Code of PRC. On the contrary, if the fact does not exist, it can not be registered. The effect of registration should be based on

legitimate and true ownership. Those who do not have the title of the ship can not be granted right because of registration. So fraud registration can not be conferred the right to challenge any third party having taken delivery of the ship.

Whether the registration is fraud, it should be judged by evidence, not by speculation. The registration of the transfer of the ownership of the ship is based on the specialized procedures of registration authorities. The record of this registration and the issuing of certificate of ownership are officially ratified by state law. The ratification is based on the fact that the shipowners provide the corresponding evidence which pass the check in accordance with procedures prescribed by stipulations in ship registration authorities. So registration should have strong proof efficacy. In the lawsuit, if the parties fail to provide adequate and reliable evidence (e.g. sales contract, the records of delivery and so on), they cannot deny the registered ownership, so the court determines the owners by registration of the ship ownership (Huang,2007).

So the registered shipowners who do not actually possess the ownership will be regarded as the real owners of the ship if the third parties can not provide adequate evidence.

Chapter 6 Conclusion

In conclusion, Item 1(4) in Interpretation of Sales Contracts adopts the principle that delivery takes precedence over registration as the judgment standard of ownership when a ship is sold for two or several times, which is unreasonable.

Firstly, from the legislative perspective, there are totally different legislative models to the basis of the judgment to the transfer of ownership and to the efficacy of registration of transfer of ship title between British law and Chinese law.

(1) In the aspect of the basis of the judgment on the transfer of ownership, in Britain, the legislative mode is Intentionalism legislative, with which another model similar to Deed Deliverism coexists. By contrast in China, the legislative mode is Creditor's Rights Externalism mode. The bill of sale is the sign of the transfer of ship title in Britain, which is also the internationally-accepted practice, while the contracts do not have this function. The delivery of the ship marks the transfer of ship title in Chinese law in which there is not any demand to the bill of sale.

(2) In the aspect of the efficacy of registration of transfer of ship title, in

Britain, registration only has publicity function, neither effectiveness element nor antagonism element. By contrast, in China, registration can act against third parties under registration antagonism legislation model.

So because of distinctions, the unavoidable contradictions come out in international ship transaction. In international maritime trials, whether following the principle in Interpretation of Sales Contracts in China or in British law, it will greatly weaken defense effect of Chinese shipowners who are likely to suffer great losses. At the same time, the principle in Interpretation of Sales Contracts conflicts with Maritime Code of PRC.

Then furthermore, from the perspective of practice: it creates chances for the ship sellers with bad motives to resell the same ship to other buyers, which will mess up ship transaction order from practical perspective of ship delivery; The concerned parties will pay more attention to delivery while neglecting registration from practical perspective of registration; The legitimate interests of applicants of demanding arresting ships can not be guaranteed, and it is also not conducive to maintaining the normal order of ship financing from practical perspective of maritime trials.

So in China, the principle that registration is prior to delivery is applicable. But the discussion above does not refer to fraud registration proved by adequate evidence which can not take precedence over delivery in trials of cases.

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