

## Hire

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*The payment of hire was a vital matter because, if there was default of "such payment" (ie, in cash monthly in advance in London), the owners were entitled to cancel the long and valuable charter. Default in payment, that is, on the due date is not, in my opinion, excused by accident or inadvertence. The duty to pay is unqualified so far as the express terms of the charterparty go. ... The importance of this advance payment to be made by the charterers is that it is the substance of the consideration given to the shipowner for the use and service of the ship and crew which the shipowner agrees to give. He is entitled to have the periodical payment as stipulated in advance of his performance so long as the charterparty continues. Hence the stringency of his right to cancel.<sup>24</sup>*

Payment of hire is a primary obligation of the charterer under the terms of time charter contract. Payment of hire is an absolute obligation and is not excused by accident or inadvertence.<sup>25</sup>

Hire is payable in advance in order to provide a fund from which the shipowner can meet those expenses of rendering the promised services to the charterer that he has undertaken to bear himself under the charterparty, in particular the wages and victualing of master and crew, the insurance of the vessel and her maintenance in such a state as will enable her to continue to comply with the warranty of performance.<sup>26</sup>

It is well settled law that an advance payment of hire under a charter-party is provisional in the sense that if the hire is not earned for the whole period covered by the payment the charterer will be entitled to recover *pro tanto*<sup>27</sup>. It is also necessary to mention here that, although advance hire under a charterparty is provisional, the charterer had a right only against the shipowner under the terms of the charterparty contract for money had and received, i.e. for hire paid but not earned. An assignee of receivables due under time charter, e.g. hire, who received an advance payment of hire pursuant to the assignment is not liable to repay it to the charterer in the event of the hire not being earned.

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<sup>24</sup> Per Lord Wright in *A/S Tankexpress v Compagnie Financiere Belge Des Petroles SA (The Petrofina)* [1948] 2 All ER 939 at p.946

<sup>25</sup> Ibid

<sup>26</sup> Per Lord Diplock in *Scandinavian Trading Tanker Co AB v Flota Petrolera Ecuatoriana (The Scaptrade)* [1983] 2 All ER 763 at p.767

<sup>27</sup> *The Trident Beauty* [1993] 1 Lloyd's Rep 443/[1994] 1 Lloyd's Rep 365 per Neill, L.J., at p.448, see also *Tonnellier v Smith* (1897) 2 Com.Cas. 258 per Lord Esher, M.R. at p. 265, *C.A. Stewart and Co. v. Phillips van Ommeren (London) Ltd.*, [1918] 2 Q.B. 560 per Scrutton, L.J., at p. 564, *French Marine Ltd. v. Compagnie Napolitaine d' Eclairage et de Chauffage par le Gaz*, [1921] 8 Ll.L.Rep. 345; [1921] 2 A.C. 494 per Lord Dunedin at p. 346, col. 2; p. 513.