

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

BEFORE THE HON. THE CHIEF JUSTICE

CAUSE NO. 201 OF 1988

On 20th, 21st, 22nd, 23rd, 28th, 29th March, 1989.

IN THE MATTER OF SWISS OIL
CORPORATION

and

IN THE MATTER OF THE COMPANIES
LAW CAP. 22

Mr. A. Jones of Maples & Calder for Republic of Gabon
(Petitioning Creditor)

Mr. S. Gee and Mr. A. Foster of Walker & Co. for
Swiss Oil Corporation

Mr. R. Potts Q.C. and Mr. Hampson of Bruce Campbell & Co. for
Lovlace (opposing Creditor) and
Mercasp Corporation (Contributory)

Mr. N. Clifford for Receiver appointed in C. 137/88

COLLETT C.J.

JUDGEMENT.

On 28th July, 1988 a petition was presented to this Court by the Republic of Gabon ("Gabon") pursuant to section 93 of the Companies Law for the winding up of Swiss Oil Corporation ("S.O.C."), a company registered in the Cayman Islands on the ground that it was unable to pay its debts. Proof of this ground was supplied by evidence that a statutory demand for payment of U.S.\$41,836,025.56 had been served by Gabon upon S.O.C. at its registered office on 23rd June 1988 and no part of that amount had thereafter been paid. That amount is shown to be due and owing by S.O.C. to Gabon by reason of an arbitral Award rendered in its favour by the Court of Arbitration of the International Chamber of Commerce at Paris in France on 3rd April, 1987, recognition and leave to enforce the same within the

Cayman Islands having been granted to Gabon by an order of this Court of 17th June, 1988 in Cause No. 328 of 1987.

The background to this Petition may be summarized as follows. These arbitral proceedings arose out of a written agreement made between Gabon and S.O.C. on 15th November, 1979 together with an addendum to it made on 15th April, 1982 for the sale and purchase of oil over a 10-year period. That agreement was abrogated and S.O.S. instituted arbitral proceedings pursuant to the arbitration clause which it contained claiming damages for loss of bargain. Gabon counterclaimed in that arbitration for the price of three cargoes of oil sold and delivered to, but unpaid for by, S.O.C.. In the result the Arbitral Tribunal awarded Gabon three sums totalling more than U.S. \$42 million plus interest thereon at 9.5% from various dates in 1982 and 1984 upon its cross claims whereas it awarded S.O.C. upon the claims asserted on its own behalf only sums totalling U.S.\$10,450,000 with interest at a like rate payable from a date in 1983. Clearly, therefore, there remains upon the face of the awards a nett liability of over \$30 million plus accrued interest in favour of Gabon.

In those circumstances by reference to section 92 (a) of the Law S.O.C. must be deemed to be unable to pay its debts and jurisdiction to wind up the company is established in accordance with section 91 (d). That finding is not open to challenge in this Court.

S.O.C. appealed to the Paris Court of Appeals against the Awards in a number of respects by a process known as recours en annulation but, on 16th June, 1988 that appeal was dismissed in toto. S.O.C. subsequently filed a further appeal with the Cour de Cassation, which is the highest French appellate court in civil matters and that appeal is now pending in its early stages, the 'Memoire' in support thereof having only been filed by those representing S.O.C. on 3rd March, 1989. A decision upon this further appeal is unlikely to be reached in less than two years time from now.

The arbitral tribunal had, in addition to the claims and cross-claims placed before it, claims advanced by S.O.C. against Gabon as the fiduciary assignee of claims asserted against that Republic by six shipowner companies who are associated companies of S.O.C. The Tribunal assumed jurisdiction to adjudicate also upon these assigned claims and in respect thereof it awarded \$6,000,000 to be paid by Gabon with interest at 9.5% from 1st July, 1983. The benefit of that particular award was subsequently assigned by S.O.C. to the shipowner companies concerned who in turn applied to this Court for recognition and enforcement thereof in the Cayman Islands. Such recognition and leave to enforce was granted to them by order dated 15th March, 1989.

The proceedings for recognition and enforcement of the award in favour of the shipowners had been commenced by originating summons in Cause No.137 of 1988 on 27th May, 1988. On 29th July 1988 the shipowners applied ex parte in those proceedings for the appointment of an interim receiver over the liability of S.O.C. to Gabon arising out of the arbitral awards in favour of the latter, to be appointed with specific power "to do all such acts and take all such steps as might appear to him to be appropriate in connection with the safeguarding and/or collection of those amounts including the taking of proceedings overseas." On 4th August, 1988 an order was made in terms of that ex parte summons appointing Mr. Christopher Johnson as the Receiver. His appointment remains subsisting and his powers remain unaltered as of today.

This Petition having been duly served and advertised notice of intention to appear as an opposing creditor was given by Lovelace S.A. ('Lovelace') one of the shipowing associated companies entitled to the benefit of the \$6 million award, alleging itself to be a creditor of S.O.C. in the sum of \$94,000 plus accrued interest; no doubt this is predicated on the Award. At the hearing Lovelace has been represented by counsel and has lent its support to the submissions advanced by counsel for S.O.C. that no winding up order ought to be made at this

junction and that the Court under section 97 of the Law should adjourn the hearing for a substantial period of time.

The Court appointed Receiver, Mr. Johnson, has also appeared by counsel at the hearing and although not strictly entitled to appear (not having given notice to do so and not claiming to be either a creditor or a contributory of the Company) he was allowed by the Court to advance submissions as an officer of the Court having an obvious interest in the underlying debt upon which the Petition has been founded. The Receiver has supported the call for an adjournment of the hearing.

The first issue requiring to be determined is indeed one which can best be described as a contest between Gabon and the Receiver regarding the locus standi of the former to pursue this Petition as a creditor of the company in respect of the underlying debt. It was strenuously argued on behalf of both Lovelace and S.O.C. that by reason of the existence of this Receivership Gabon no longer has the right to maintain the present Petition before the Court and that the Receiver is the rightful person to 'speak for' the debt and to have the 'carriage' of this Petition. It is conceded by those opposed to the making of a winding-up order that the effect of the Court appointment of a receiver over a debt due from a company is not to transfer to him title thereto so as to constitute him a creditor of the company and it is further conceded that he has no power, therefore, to petition for a winding up of the company in his own name. But it is asserted that his appointment gives to this Receiver possession and control over the debt and divests Gabon of such control so that it follows from this, the court should ignore the wishes of Gabon and should instead pay attention to the wishes of the Receiver, Mr. Johnson, in regard to the disposition of this Petition. Further it is asserted that the attempt by Gabon to obtain a winding-up order is an interference with the Receiver's possession of the debt which on the authorities should be treated as a contempt of court, the Receiver being an officer of the Court.

Reliance was placed in support of that submission upon the decision of the Cayman Court of Appeal in Kildarkin Investments v Player (1984) CILK 63 in which that Court held that the effect of a foreign court order which it recognised, appointing the appellant as receiver and manager of all the undertaking of a company incorporated within the foreign jurisdiction, had the effect of vesting complete control and management of that company in him to the exclusion of its board of directors. Thus it was the appellant and not the directors who were entitled to act for the company in the conduct of Cayman litigation. Such an order is similar in its scope to the appointment of a receiver and manager under a company debenture. It was urged upon me that no difference in principle exists between such a receivership and the receivership of a debt, as here.

As counsel for Gabon points out, however, it is the nature of the property under receivership which determines the scope of the authority necessary to make it effective. Where that property is a business undertaking requiring the daily exercise of decision making for its proper conduct, it is inevitable that control over it must (if it is to be at all effective) include the right of the receiver to exercise the decision making power to the exclusion of those who would otherwise have the right to do so. That is why such a receiver is not only designated as such but also commonly as manager of the undertaking. Mr. Johnson has not, of course, been appointed receiver or manager over the 'undertaking' of Gabon but only over a debt due to it, control of which does not involve the exercise of decision making of this kind.

Counsel for those opposed to winding up also cited the decision of the English Court of Appeal in The Peak Hill Goldfield Ltd. (1909) 1 K.B. 430, which was a case of the appointment of a receiver over a debtor's interest in debenture stock. This was held sufficient to prevent that debtor from relying on such stock as a debt due to him from the company which he might claim to set off against other monies which he owed to

it. As Fletcher Moulton L.J. said at p. 436, "all monies payable by the company in respect of the debenture stock were payable to the receiver of the judgement creditor and not to the debtor and the debtor was not entitled to receive them or to give a discharge for them or to set them up by way of set-off in an action". Such an attempted set-off was clearly an attempted interference with the possession of the receiver since, if successful, it would have entailed the extinguishment of the debtor's interest in the stock. The basis of that decision is therefore clear.

It by no means follows that the presentation action or prosecution of a winding up petition as here in respect of a debt the subject matter of a receivership entails such interference; since the making of a winding-up order and the appointment of an official liquidator cannot of itself deprive the receiver of his possession of the debt or affect its existence. In re Marquis of Anglesey (1903) 2 Ch. 727 was cited but that case, which principally concerns the priority of several judgement creditors where a receiver is appointed, is authority for no more than the general proposition that the receivership prevents a judgement debtor from dealing with the moneys subject to it to the prejudice of the judgement creditor. It has in my view no application here, where no such dealing is involved.

Ames v Trustees of the Birkenhead Docks (1855) 20 Beavan 322 was also cited. That was a case in which a receiver had been appointed to receive debts, rents and tolls due to a undertaking and it was held that no other person would be permitted, even acting under legal process, to intercept or prevent payment to the receiver of what he had been appointed to collect. It was, however, also held that the appointment of such a receiver did not purport to supersede the powers of the trustees of the undertaking conferred by Act of Parliament to manage it or confer upon the receiver any powers of management; see per Romilly M.R. at pp350-351. This seems to underscore a real distinction in the function and the necessary powers incident to the appointments respectively of the receiver of a

debt and the receiver/manager of an undertaking, which is of fundamental importance to a resolution of the present issue.

Then in *Re Sartoris* (1892) 1 Ch it was held by the English Court of Appeal, affirming Chitty J., that the effect of the appointment of a receiver is to operate as an injunction restraining a defendant from getting in money which the receiver is appointed to receive. This is, no doubt, the law but it does not follow that it operates as an injunction preventing the person in whom the title to the debt is vested from petitioning for the winding up of the company which owes the debt.

Moreover, in a passage at first instance from which the members of the Court of Appeal did not dissent, Chitty J at p.14 pointed out that, as there was no vesting of the debtor's property in his receiver, a bankrupt alone can bring actions for property not in his possession such as a debt due to him at law. He went on to cite a passage from an earlier decision of Lindley L.J. (a member of the Court in *Re Sartoris*):- "what the debtor recovers in the action is his property both legally and equitably, although he must when he recovers it hand it over to the official receiver for the benefit of his creditors if he does not pay or compound with them;" (my emphasis).

Dicta of Mustill J at p. 11 of the Lexis transcript of the judgement in *Orrl v Mourdreas* (1981) are to the same effect and indicate that a receiver of shares is not ipso facto invested with authority to petition for a winding-up as a contributory; although the force of these observations is for present purposes lessened by the circumstance that the company concerned in that case was incorporated abroad. There are differences noted in *re Maudsley* (1900) 1 Ch 602 at p. 610 by Cozen-Hardy J. in respect of the effect of the appointment of a receiver over property situated abroad by contrast to a receiver of assets located within the jurisdiction. But this is nevertheless another straw in the wind and there is nothing in the judgement of Mustill J. to indicate that he thought the locus of the company was vital.

There appears to be no authority binding on me or even

persuasive to the effect that a creditor of a local company for an amount sufficient to support a winding up by petition is not entitled to petition in reliance upon that debt merely because an interim receiver has been or is appointed in respect of it for the purpose of preserving and/or collecting in the debt. I can find no basis for holding that he is thereby deprived of locus standi: to hold in that sense would involve the consequence that, unless a receiver has been specifically clothed with power to present a petition in the name of the creditor - and that is not the case here - nobody would be in a position to petition for a winding up based upon the existence of that unpaid debt. It is clear that a receiver may not do so in his own name as he is not the creditor. The statutory jurisdiction under the Companies Law would thereby be frustrated to no useful or productive purpose. Nor does it appear to me that any impermissible interference with the possession and functions of the Receiver here is involved in the presentation of pursuit of this winding up petition. If it results in the making of a winding up order and the appointment of an official liquidator, the possession of the debt owed by the company which the Receiver has will not be disturbed and he will remain invested with the sole authority to safeguard and collect the debt. If any dividend should subsequently fall to be paid it would become the duty of the official liquidator to pay it over to the Receiver, not to Gabon.

For those reasons I reject the submissions made to me on behalf of those opposed to winding up directed towards the locus standi of Gabon and the propriety of its pursuit of a winding up as the petitioning creditor herein. Having therefore determined that there is no bar to the continued prosecution of this Petition, I turn now to the course which the Court should adopt in regard to its disposition. This is a matter of discretion: See *In re Greenwood* (1900) 2 A.B. 306. The choice to be made lies between the making of a winding-up order, dismissal of the Petition, adjournment or the making of an interim order: see S.97 of the Law. No case has been made out for a dismissal at this stage or for the making of an interim order. Those opposed to

the Petition have urged upon the Court the propriety of an adjournment and various matters have been put forward in support of that course which require examination. But having established the existence of the debt and the insolvency of the company a petitioning creditor is prima facie entitled *ex debito justitiae* to the winding up order which he seeks and it follows that the onus is upon those opposed to the making of such an order to persuade the Court that an alternative course, adjournment in this case, is more appropriate, just and convenient and ought to be followed.

The first substantial matter relied upon in favour of adjournment is S.O.C.'s pending appeal to the Cour de Cassation against the judgement of the Paris Appeals Court which dismissed its recours en annulation against the arbitral Award. I have been referred to the 'Memoire' which specifies the four grounds relied upon including detailed arguments in favour of the appeal and to a detailed criticism of these arguments contained in a lengthy affidavit sworn by Maitre Jean Paul Calon which was filed by Gabon. His conclusion is that there is no merit in any of those grounds. Time constraints have prevented S.O.C. from filing expert evidence in reply to Maitre Calon's views but Mr. Gee from the Bar has subjected his affidavit to a critical analysis of its reasoning and conclusions.

It is tempting in such circumstances for the Court to undertake at least an intelligent appraisal of the likelihood of eventual success of the appeal to the Cour de Cassation in the light of the respective arguments advanced. That temptation must be resisted, however. This Court is not equipped to evaluate the strengths of weaknesses of legal argument advanced by lawyers working under a very different legal system to our own, without the benefit of cross-examination or indeed full exposition upon both sides of the question. I am conscious that the logic of the respective arguments will fall to be determined in accordance with French legal principles by those familiar with French law as I am not. The best assessment that I can arrive at upon the material before me, labouring as I do under these

limitations, is that the result of the appeal the Cour de Cassation by S.O.C. is not a foregone conclusion and that a decision either way is possible on any one of these four grounds.

How does this conclusion bear upon the exercise of this Court's discretion in the present matter? Counsel for Gabon has made the point that unless the appeal succeeds upon at least two specific grounds out of the four, its result will be incapable affecting the exercise of the debt upon which the Petition is founded. That is because the appeal does not seek to impeach the Court of Appeal reasoning in relation to that part of the Award which deals with the unpaid price of the three oil shipments but only that dealing with the part which quantifies the size of S.O.C. cross-claim for damages. So unless the Cour de Cassation concludes that the Tribunal should have made no discount at all of those cross-claims on account of the 30% contributory fault which it imputed to S.O.C. in respect of those damages or in respect of its finding that there was in all the circumstances only a one-in-three chance of the parties arriving at any acceptable spot price formula for future oil deliveries, the eventual result is bound to be that Gabon remains a net creditor of S.O.C. In that case the basis of the Petition is unaffected. The arithmetic is such, however, that if S.O.C. succeeds in full upon both these grounds, it could be affected and the present debt eventually wiped out.

In *Re Amalgamated Properties of Rhodesia* (1917) 2 Ch.

115 it was held that the mere existence of an appeal to the local Court of Appeal against the judgement on which a winding up petition is founded is no reason why the company should not be ordered to be wound up. In *Re Douglas Briggs Engineering Ltd.* (1962) 1 Ch.19 Pennycuik J. applied that decision to a case where litigation was still pending at first instance in regard to a claim which the respondent company was maintaining in other local proceedings against the petitioning creditor for an amount larger than the debt which that creditor relied on in the winding up against the company. It was held that the *prima facie* right of the petitioning creditor to a winding up order was not displaced.

On the other hand in *Re L.H.F. Woods Ltd.* (1970) 1 Ch. 27, the English Court of Appeal held that where the Company sought to be wound up was bona fide pursuing in a foreign court of first instance a cross-claim against the petitioning creditor for damages, the proper course was to adjourn the hearing of the winding-up Petition pending the outcome of those proceedings. Edmund Davies L.J. at p. 42 said it was pertinent to note that the cross-claim there had a serious chance of success and he further noted that the company had no assets.

In the present case it has been estimated that the Cour de Cassation will not deliver judgement for another two years. If it does there will in all probability have to be a further hearing in the Paris Court of Appeals which may, if S.O.C. succeeds there also, lead to a rehearing of the arbitration by a fresh tribunal. A delay of many years will undoubtedly be involved and at the end of the day the likelihood that the existence of a debt due from S.O.C. to Gabon sufficient to support this Petition will be displaced is clearly slim indeed. By that time, if S.O.C. is eventually wound up upon this Petition after an adjournment of such a length, the likelihood of any liquidator being able realistically to pursue any claims which that company may have for misfeasance against former officers and directors which may afford the creditors the only chance of some recovery, will in all probability have disappeared.

A further factor which I take into consideration is that, if further independent advice obtained by a liquidator indicates that there is substantial prospect of securing financial benefit for S.O.C. and its creditors from a pursuit of the Cour de Cassation appeal it will be open to him to apply to this Court for leave to pursue it and there is no evidence to suggest that the chances of success therein would be in any way diminished by transfer of the conduct of the appeal to such a liquidator. In the meantime the cross claims of S.O.C. must be regarded as matters which have already been adjudicated against them both at the arbitration and on first appeal. The situation is thus materially different on the facts to that which faced the

courts in L.H.F. Woods Ltd. I therefore hold that the existence of the appeal is not a sufficient reason to delay the making of a winding-up order in this case.

I turn next to the assertion which has been vigorously pursued that a bargain was reached between the counsel for Gabon and counsel for the shipowners who include Lovelace, in Cause 137 of 1988 that the hearing of this Petition should not be brought on until the final determination of the originating summons in that action including any appeal from this Court's decision which Gabon might wish to bring before the Cayman Islands Court of Appeal.

A great deal of affidavit evidence has been filed and was referred to at the hearing in relation to the question, was there ever a concluded agreement between Mr. Quin representing Lovelace and the other shipowners and Mr. Jones representing S.O.C. outside the Court chambers door on the morning of 20th December 1988. The terms are said to be that neither party to Cause 137 of 1988 would seek to appeal the rulings of Harre J. given therein on 6th December, 1988 and that S.O.C. would, in consideration of the shipowners forbearance to appeal, postpone the hearing of this winding-up Petition until the final determination of the originating summons in that cause including any appeal therefrom that Gabon but not S.O.C. might choose to take. There is no doubt that a counter-offer in those terms was put by Mr. Quin to Mr. Jones by a faxed letter just before they met that morning. There is no doubt that Mr. Quin believed and still believes that he had actually concluded an agreement in those terms. There is equally no doubt that Mr. Jones believes that an agreement was reached between them in different terms, namely that neither party would appeal the respective rulings of Harre J. against them and that the hearing of the winding up petition should be adjourned until 20th February 1989 with a proviso that, if Cause 137 of 1988 had not been heard and determined in the Grand Court by that date some further adjournment of the hearing of this Petition might become necessary. It may be that in fact they never were ad idem.

There is no note or memorandum of the terms of any agreement actually reached between counsel on 20th December, 1988 and references in contemporary documentation and the correspondence are equivocal as pointers towards the true state of affairs. The question of whether or not there was indeed a concluded agreement and if so in what terms are the subject matter of other proceedings commenced by writ in Cause No. 51 of 1989. It would be quite wrong for me to attempt in these proceedings to resolve those issues without the benefit of cross-examination. Ought I therefore to adjourn this Petition to await the outcome of those proceedings, which do not, in my view, affect either the existence of the debt or the standing of the Petitioner or the merits of the question whether or not this company should now be wound up in the interests of the creditors generally?

I have reached the conclusion that I ought not to adjourn and primarily for two reasons. Firstly, it will be recalled that in a ruling delivered in Chambers on 20th February, 1989 in Cause No. 51/89 I held that even if the shipowners are, at the end of the day, able to show that a bargain in the terms which they assert was validly created between themselves and S.O.C. by their respective counsel and that such a bargain is enforceable, the declaration sought in that action and damages will be a perfectly sufficient remedy to them. Having so held it would be the height of inconsistency for me now to adjourn the hearing of this Petition merely on account of the existence of such a bargain supposing I could find it to be sufficiently established on the facts. That would be tantamount to the granting of the equitable remedy of specific performance in a case where legal remedies are seen as adequate to vindicate the plaintiff, a course which a court of Equity will hardly ever adopt: see *Spry on Equitable Remedies* p. 57.

Secondly, although counsel for Lovelace has strongly submitted that it is an abuse of process for a petitioning creditor to pursue his petition in the face of an agreement between counsel of the nature postulated, I do not take that

view. This on the face of it is an alleged bargain made without participation by of the Court between a petitioning creditor and third parties who are in litigation with him in other proceedings (although they may incidentally include an opposing creditor in the winding up) to defer the exercise by the Court upon the merits of the supervisory jurisdiction vested in it by the Companies Law so as to advance their private interest as litigants in the other proceedings. Even if such a bargain is held to be valid and enforceable at law it is not one which this Court is prepared to specifically enforce by choosing to exercise in favour of those who seek to place reliance on it a discretionary power which is meant to be exercised upon the merits of the petition viewed as a whole. This Court will not hold a petitioning creditor who makes such a bargain to its terms if he later chooses to resile from them because to do so would be to sanction an impermissible interference with the judicial exercise of that discretionary power.

The last substantial matter upon which reliance was placed in seeking an adjournment was an offer which the Receiver, Mr. Johnson, had received as recently as 8th March, 1989. This offer emanates from New York attorneys acting on behalf of Mercasp Corporation which they allege to be "the shareholder" of S.O.C. That offer is to purchase S.O.C.'s debt to Gabon for \$9.5 million (U.S.) The offer is made expressly conditional upon the dismissal of this Petition. The amount chosen is by co-incidence just sufficient to satisfy the award in favour of the shipowners for \$6 million and accrued interest, leaving nothing over for Gabon. It is put forward by an entity which can only be presumed to be under the same control as the various shipowning companies themselves; Gabon so asserts and it has not been denied.

The Receiver has acknowledged receipt of this offer and, while making it clear that he has no authority to accede to it without an order of this Court, he has quite properly adopted the stance that he wishes to investigate its validity. Bearing in mind the terms of the order of 4th August, 1988 I do not think he

can be criticized for doing so; it might after all represent the only realistic chance of his obtaining any money from any source for the debt which he has been empowered to collect. The Receiver had, in those circumstances little option but to lend his weight to the call for an adjournment, seeing that the offer has been so worded as to presage its disappearance like the cheshire cat so soon as a winding up order should be pronounced. I have no doubt that those who made the offer foresaw that this must be his response.

Although the Receiver cannot be faulted for the stance he has adopted, it by no means follows that the Court itself is obliged to follow suit if the offer itself, which needs the approval of the Court to be effective, is seen as so cynically contrived, unconscionable and unfair that it could in no circumstances warrant such approval being given whatever the eventual outcome of his investigations might be. The timing, the amount, the express condition attached and the source of the offer in this case point to only one conclusion. This is a patent and deliberate attempt to pull wool over the eyes of the Court and to use the doctrine of corporate autonomy enshrined in the well known case of *Salomon v Salomon* as a means to defeat the interests of justice. Such an endeavour not only renders this offer one unworthy of serious consideration by this Court but also casts grave doubt upon the general bona fides of those who have orchestrated from behind the scenes the chorus of opposition to this Petition so long, so ingeniously and so persistently over a period of some eight months.

Other miscellaneous matters urged in opposition can be speedily disposed of. One is the suggestion contained in the first affidavit of Captain Charles Vanderperre, that sufficient security for the debt is available to Gabon in proceedings which it has taken out in Switzerland and Belgium. Other evidence clearly shows that these proceedings afford little or no present security; the Swiss proceedings have been stymied and the Belgian proceedings are at an early stage and, as the affidavit of Luc Demeyre demonstrates, are by no means assured of eventual

success. Meanwhile the maraeva injunction obtained from this Court on 24th December 1987 is now seen as affording no practical security whatever to Gabon for lack of any assets of S.O.C. within the jurisdiction of this Court.

Then there is the new arbitration which has been set on foot by S.O.C. against certain high officials and former officials of the Republic of Gabon which asks for indemnity from them against claims raised by National Petroleum Ltd. of Bermuda for damages said to result from the breach of an oil procurement contract signed in October, 1979. National Petroleum is another company controlled by those who control S.O.C. and the shipowner companies. Once again the timing of this claim, the identity of the claimant and the attitude towards it adopted by S.O.C. do not incline me to accept its bona fides. Even if it were accepted at face value it would seem to me to afford little or no good reason for adjourning these proceedings at this stage.

Finally in Captain Vanderferre's second affidavit, the proposed appointment of joint liquidators, one of whom is resident in Geneva, is called in question as unnecessary and likely to be unproductive of results. But if there is any realistic prospect of pursuing on behalf of S.O.C. a claim for misfeasance by its present or former directors or officers, the presence of a liquidator in Switzerland, from which country its affairs were directed when the oil supply contract was current, would in my view, conduce to the efficient conduct of necessary inquiries and searching investigations to determine whether or not such the pursuit of any such claims should be sanctioned in future by this Court.

For all these reasons, therefore, I find myself left in no doubt that the proper course here is to order the immediate winding-up of Swiss Oil Corporation. There will be an order in terms of paragraph 1 of the Petition filed on 28th July, 1988 and a further order appointing Mr. James G. Cleaver of Arthur Young Cayman and Mr. Alain Winkelmann of Arthur Young and Company S. A. Geneva as joint official liquidators.

17
I will hear counsel further as to ancillary orders and

as to costs.

Dated 13th April, 1989.

Chief Justice.