

Wrongful Arrest

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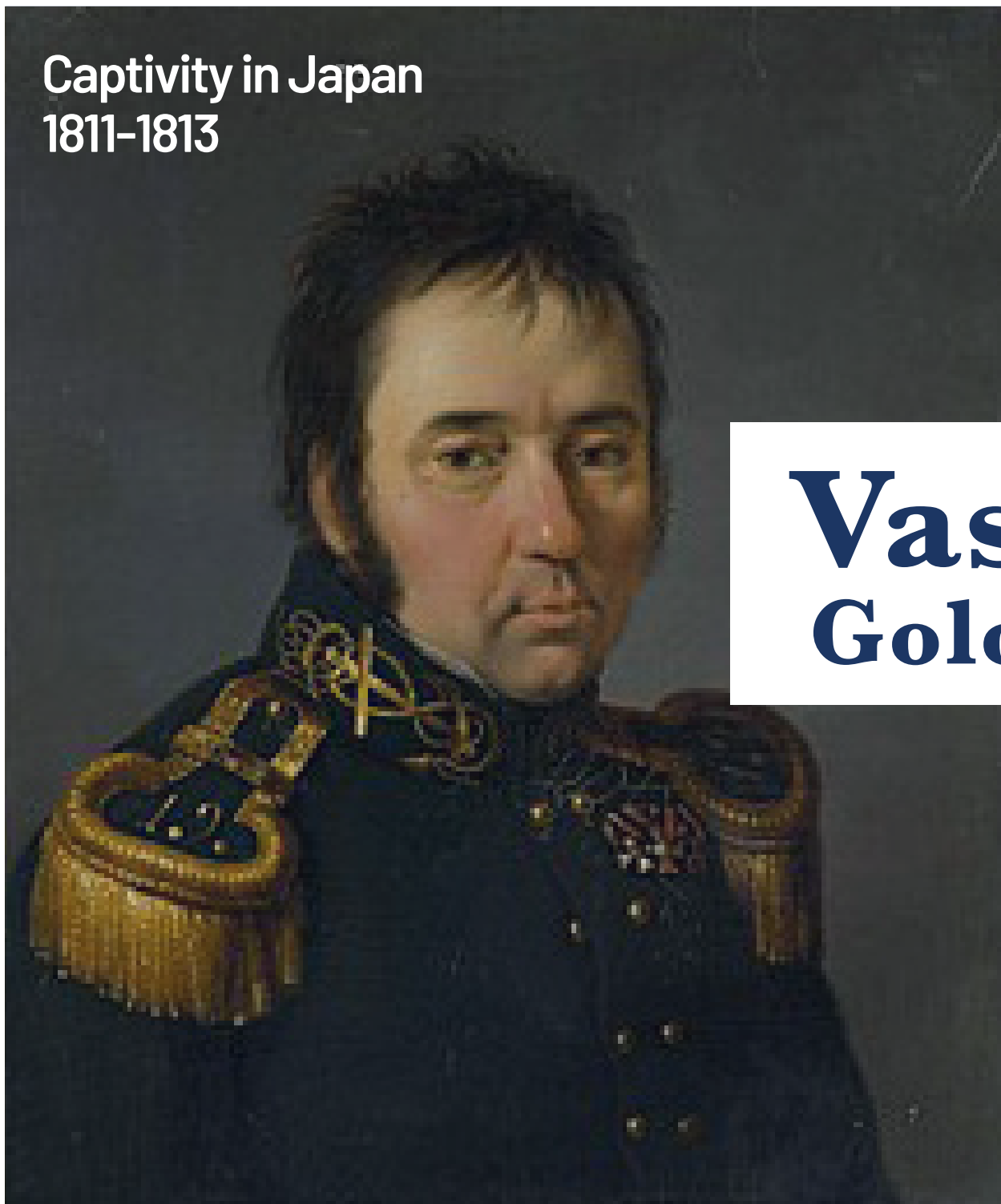
By Yoav Harris, Adv.



Harris & Co
Maritime Law Office

SHIP
ARRESTED.COM™

Captivity in Japan
1811-1813



Vasiliy Golovnin



Arrested by Court
of Singapore 2006

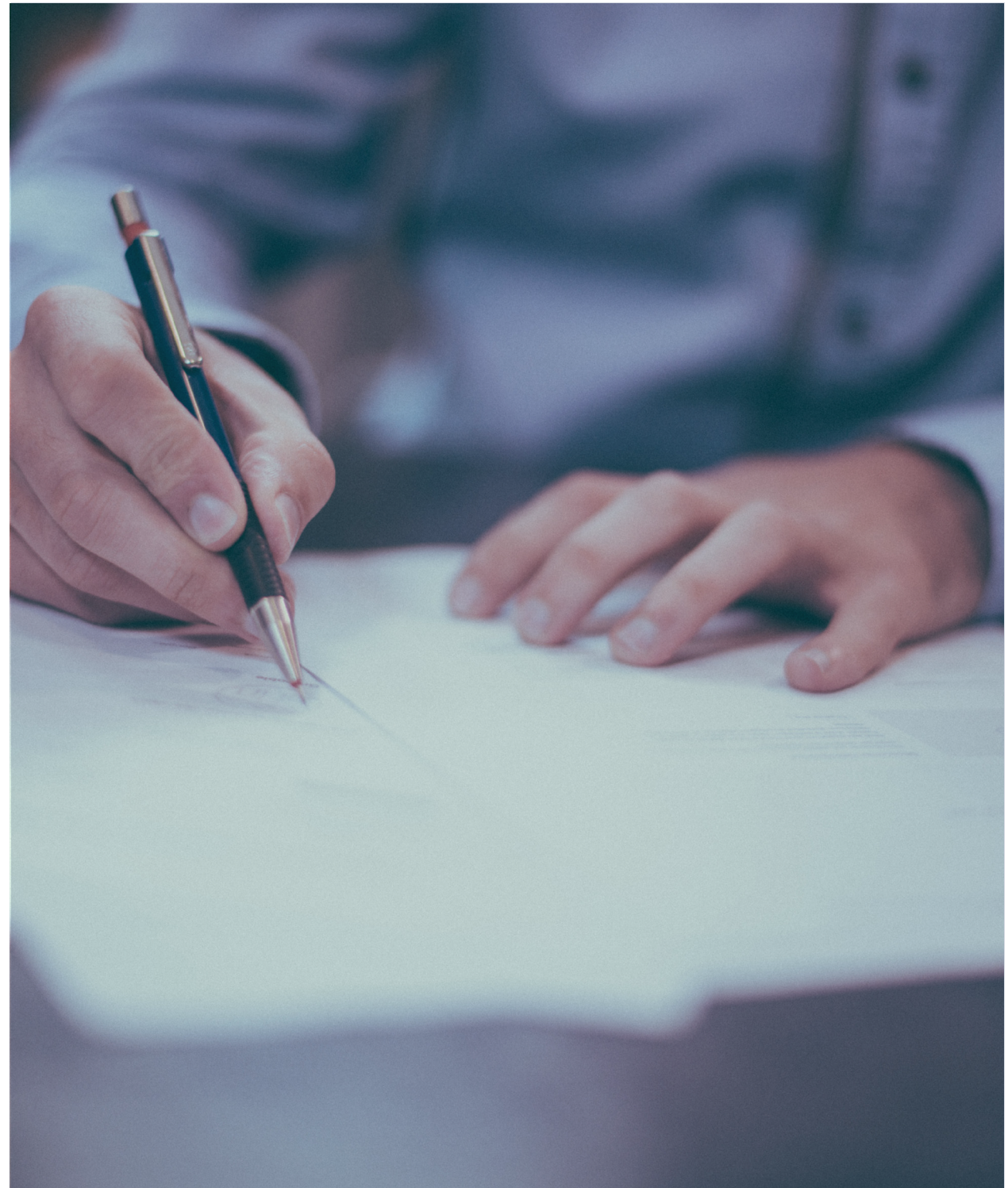
The M/V Cheylabinsk

Owners | **Fesco**

Main Charterers | **STC**

Sub Charterers | **Rustal**

Financing Banks of Rustal



Chinees Rice

3 B/L

Any African Port



Indian Rice

5 B/L

Lome' Togo



Exchange of B\L?



Cargo discharged at Doula



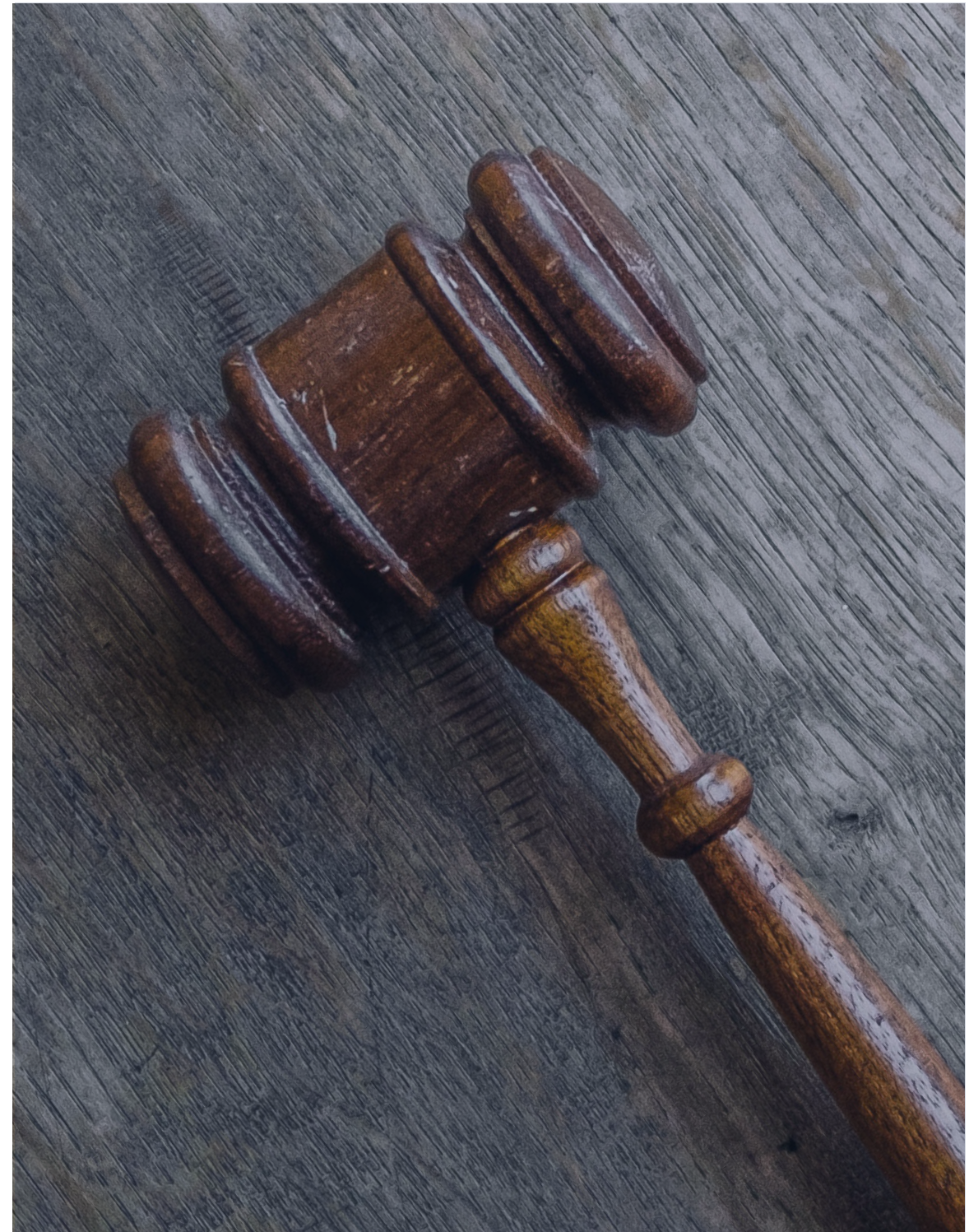
Lome' Release Order

Fresco (Owners) were not in fault when following STS (Charterers) Orders

The Port of Douala was the port named in the B\L

Security was provided for the alleged damage claim

The Banks had no right to arrest the M\V Cheylabinsk (Chartered Vessel)



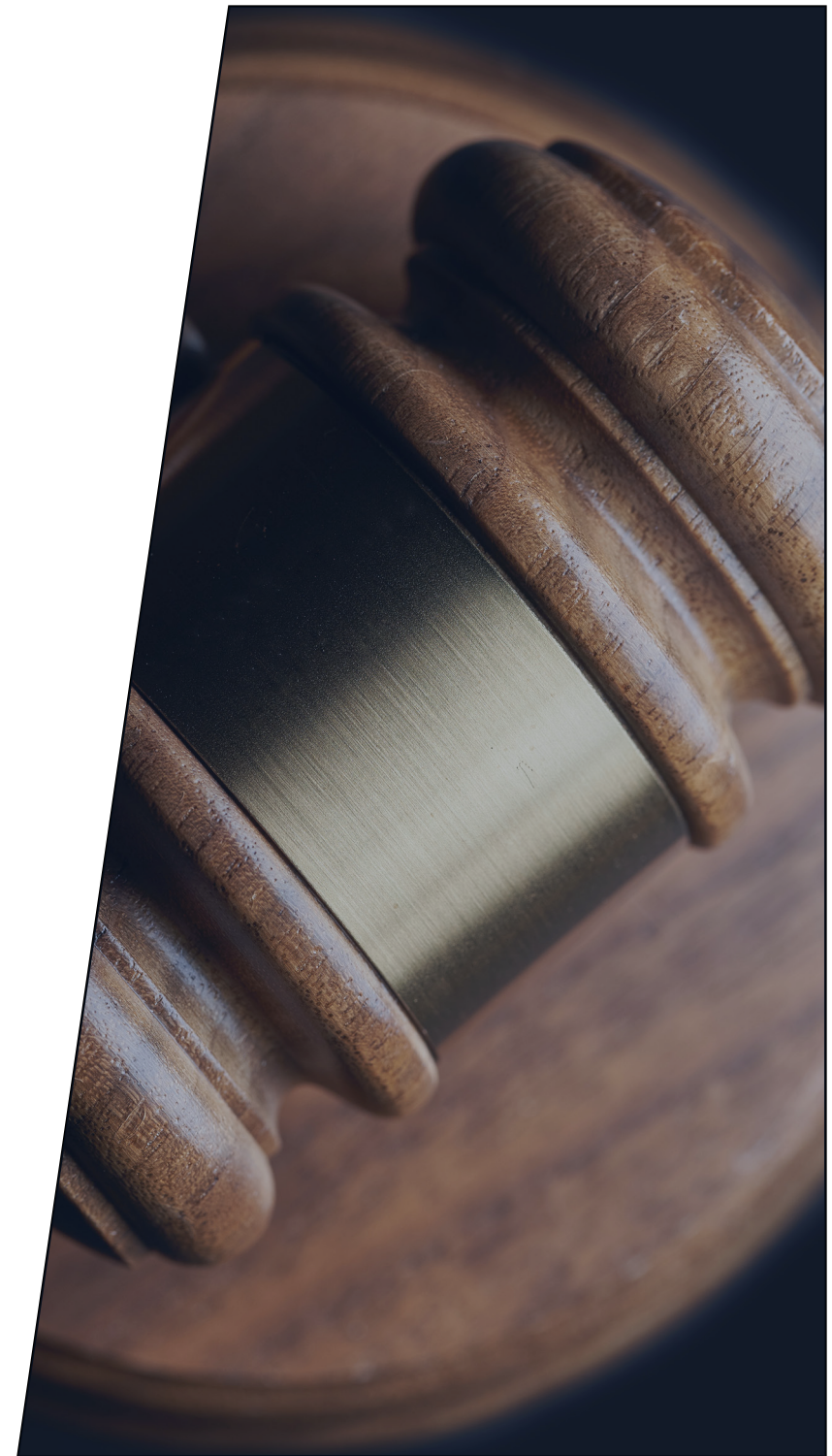
The Banks sister-ship Arrest of the M\ V Vasiliy Golovnin in Singapore



The Evangelismoss Test

“mala fides, or crass negligentia, which implies malice”

“The real question in this case...comes to this:
is there or is there not, reason to say, that the action was
so unwarrantably brought, or brought with so little colour,
or so little foundation, that it rather implies malice...,
or that gross negligence which is equivalent to it”





Series of Decisions following the Evangelismos

The Cheshire Witch (1864)

a hapless appeal

The Catchart (1867)

a financial scheme

The Margarate Jane (1869)

the salved ship was below 1,000

The Evangelismoss Test





Wrongful Arrest = Malicious Prosecution

Untill 1873

In rem proceedings begun
by warrant of Arrest

**Supereme Court
of judicator Act 1873**

Admiralty proceedings are
commenced by writ of summons

The Evangelismos Test - Matter of Policy

The Arrest provides an
un defeated Security

The Arrest requires the owner
to furnish security



The Application of the Evangelismos Test

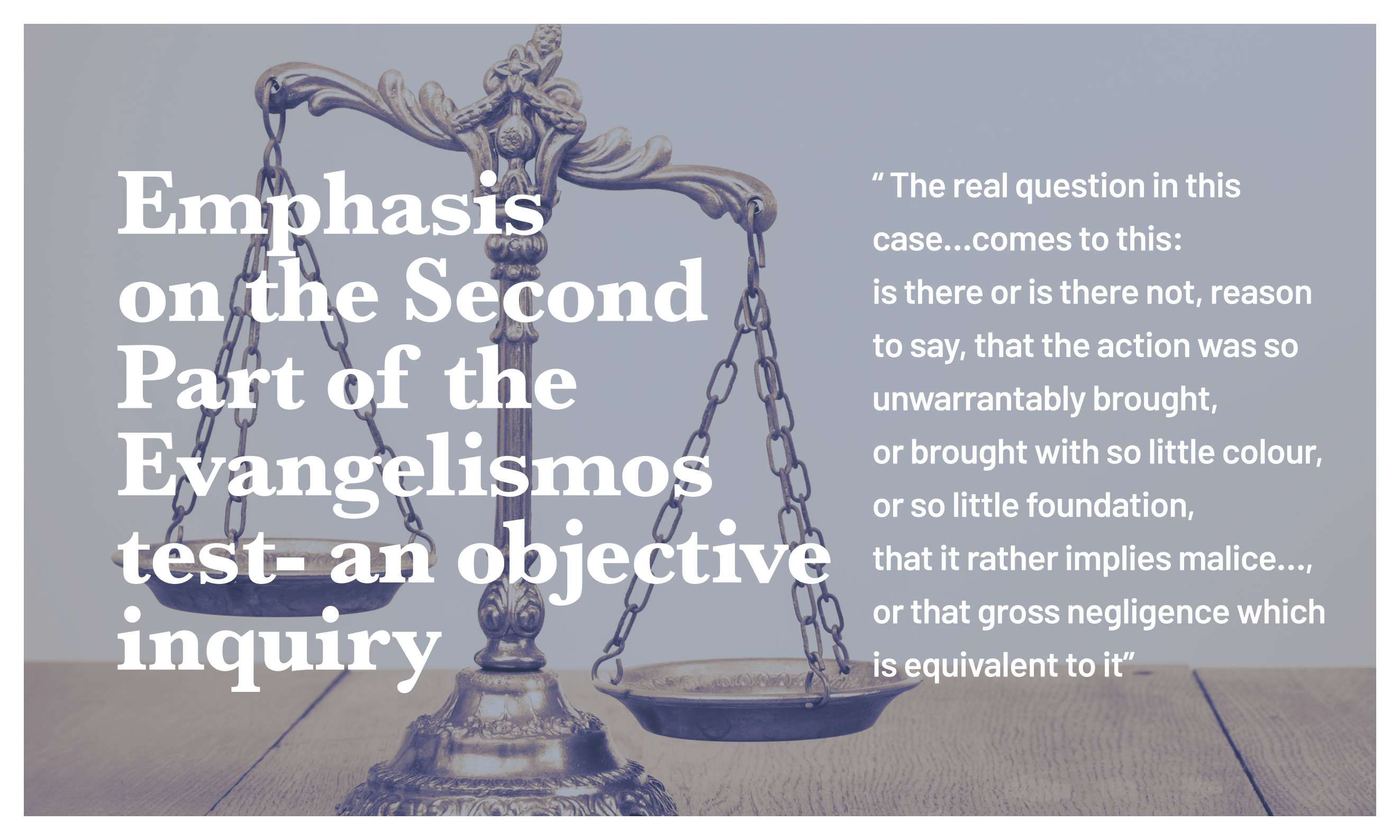
The Dilmun Fulmar (2004)

Re-arresting a vessel for repairs.

The AAV [84]

non discloser of material facts



A pair of ornate brass scales of justice, commonly known as the Scales of Lady Justice, are positioned on a wooden surface. The scales are made of polished brass and feature intricate carvings, including a figure of Lady Justice at the top. The two pans are suspended by heavy chains. The background is a solid, muted blue-grey color.

Emphasis on the Second Part of the Evangelismos test- an objective inquiry

“ The real question in this case...comes to this: is there or is there not, reason to say, that the action was so unwarrantably brought, or brought with so little colour, or so little foundation, that it rather implies malice..., or that gross negligence which is equivalent to it”

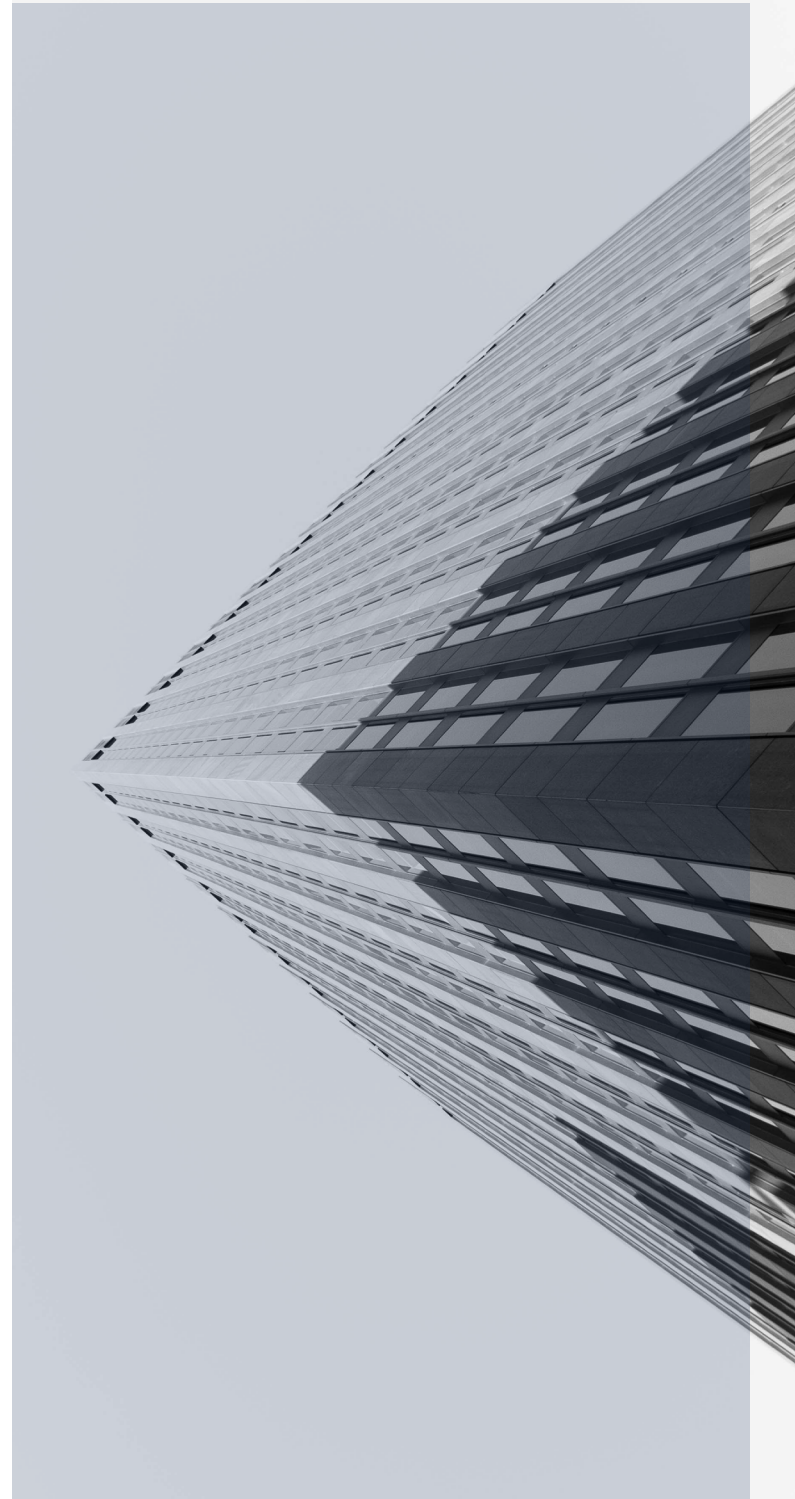
The Banks Arresting the Vasiliy Golovnin In Singapore

The Claim had been disposed of in Lome

Sufficient security had been provided

The Banks failed to disclose material facts

The claim and arrest had been initiated “so unwarrantably”
with “so little foundation” – amounted to “crassa negligetina”



The words of the Court

"A groundless claim was pursued, Material facts were omitted. A draconian was pursued. Material facts were omitted.

The Banks can not be said to have entertained an honest belief that they had valid claims... The Banks now have to accept the painful consequences of having abused the judicial process".

Damages against the Banks are to be assessed.



The International working Group on the Liability for Wrongful Arrest

CMI MEETING Hamburg 2014





Thank You Malta

—
Yoav Harris, Adv.

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