LLOYD'S
LAW REPORTS

Editor:
Miss M. M. D'SOUZA, LL.B.
of the Middle Temple, Barrister

1982

Volume 1

PRINTED BY HOLMES & SONS (PRINTERS) LTD., 10 HIGH STREET, ANDOVER, HANTS.

© LLOYD'S OF LONDON PRESS LTD. 1982

CASES JUDICIALLY CONSIDERED

CASES JUDICIALLY CONSIDERED—*continued*

STATUTES CONSIDERED

此为试读,需要完整PDF请访问: www.ertongbook.com

CONTENTS

NOTE: These Reports should be cited as "[1982] 1 Lloyd's Rep."

CONTENTS—*continued*

CONTENTS—*continued*

CONTENTS—*continued*

CONTENTS—*continued*

CONTENTS—*continued*

此为试读,需要完整PDF请访问: www.ertongbook.com

CONTENTS—*continued*

LLOYD'S LAW REPORTS

Editor: Miss M. M. D'SOUZA, LL.B., Barrister

[1982] VOL. 1] **The "Laura Prima"** PART 1

HOUSE OF LORDS

Nov. 2, 1981

NEREIDE S.P.A. DI NAVIGAZIONE
v.
BULK OIL INTERNATIONAL LTD.

(THE "LAURA PRIMA")

Before Lord DIPLOCK,
Lord FRASER OF TULLYBELTON,
Lord SCARMAN,
Lord ROSKILL and
Lord BRANDON OF OAKBROOK

Charter-party (Voyage) — Demurrage — Notice of readiness — Delay in vessel getting into berth — Whether laytime commenced 6 hours after notice given — Whether owners entitled to damages for detention — Exxonvoy 1969.

The owners let their vessel *Laura Prima* to the charterers under an Exxonvoy 1969 form of charter-party dated Nov. 22, 1978.

The charter provided that the vessel was to proceed from one safe berth at a place in Libya to two safe ports on the west coast of Italy, that laytime was 72 hours and that the rate of demurrage was U.S. $33,247.50 per day. The charter further provided inter alia:

> 6. Notice of readiness: Upon arrival at . . . port of loading . . . the Master . . . shall give the Charterer . . . notice . . . that the vessel is ready to load . . . cargo, berth or no berth, and laytime . . . shall commence upon the expiration of six . . . hours after receipt of such notice . . . However where delay is caused to Vessel getting into berth after giving notice of readiness for any reason over which Charterer has no control, such delay shall not count as used laytime.
>
> 9. Safe berthing — shifting. The vessel shall load . . . at any safe place or wharf, or alongside vessels . . . reachable on her arrival, which shall be designated and procured by the Charterer . . .

The vessel arrived at her loading place in Libya on Nov. 27, 1978, at 01 40 hours and notice of readiness was given. The vessel was unable to proceed to her loading berth either then or at the expiry of the six hours since all possible berths were occupied by other vessels. This remained the case until 16 30 hours on Dec. 6, 1978. The period of detention was therefore 9 days 8 hours and 50 minutes. The charterers were not responsible for this situation nor was it in any way within their control.

On Jan. 8, 1979, the charterers paid to the owners $162,158.22 on account of demurrage but entirely without prejudice. The owners claimed a larger sum and the dispute was referred to arbitration.

The charterers contended that since they were protected by the last sentence of cl. 6, for the period of detention, the vessel was only on demurrage for 15 minutes, the owners were only entitled to $341.78, and they claimed back the amount they had paid less $341.78.

The umpire found that the sole cause of the delay to the vessel getting into berth was the unavailability of a berth due to the presence of other vessels, that the charterers had warranted that they would designate and procure a berth reachable on the vessel's arrival pursuant to cl. 9 and the charterers were in breach of this obligation. The umpire, nevertheless reached the conclusion that the owners were only entitled to a small sum of demurrage but stated his award in the form of a special case, the questions of law for decision of the Court being:

> Whether on the facts found . . . and on the true construction of the charter (a) laytime is to count from 07.40 hours on 27th November and demurrage therefore from 07.40 hours on 30th November, 1978 until 16.30 hours on 6th December or (b) although laytime and therefore demurrage are not to count during the said period the [owners] are entitled to damages for detention in respect of it.

———*Held*, by Q.B. (Com. Ct.) (MOCATTA, J.), that (a) cll. 6 and 9 had to be read together in the context of the charter-party as a whole and it was clear that this was a port charter and there was no express provision in the charter that the risk of congestion in the port was to be placed on the owners;

(2) the last sentence in cl. 6 only applied and prevented laytime from running if the charterers, pursuant to cl. 9, had designated and procured a safe place or wharf or alongside vessels reachable upon the vessel's arrival, and if an intervening event occurred causing delay over which the charterers had no control; unless cl. 6 was construed in this way, it would appear that the last sentence would in many cases, and certainly those of congestion, deprive the words "reachable upon her arrival" of the contractual effect given them;

(3) the correct answer to the question of law was that (a) would be answered in the affirmative.

On appeal by the charterers:

———*Held*, by C.A. (LAWTON, O'CONNOR and FOX, L.JJ.), that (1) the last sentence of cl. 6 identified a state of affairs of fairly common occurrence with large tankers and provided that delay in getting to its berth for reasons beyond the control of the charterers should be at the owners' risk just as in cl. 7 any delay due to the vessel's breakdown or inability of the vessel's facility to load or discharge within the allowed laytime was not to count as used laytime; the last sentence in cl. 6 was therefore not an exception to liability under cl. 9 but was a provision stating that a delay caused for any reason beyond the charterers control after notice of readiness had been given was not to count as used laytime;

(2) such a construction fitted into the scheme of the charter in that it enabled the last sentence of cl. 6 to be read as commercial men would have read it and to be reconciled with cl. 9 since the period of detention for breach of cl. 9 would have come to an end with the allowed period of laytime extended by delay caused for any reason beyond the charterers' control if that was what the evidence established; and the umpire's questions would be answered in the negative and the appeal would be allowed.

On appeal by the owners:

———*Held*, by H.L. (Lord DIPLOCK, Lord FRASER OF TULLYBELTON, Lord SCARMAN, Lord ROSKILL and Lord BRANDON OF OAKBROOK), that (1) clauses in charter-parties as in other contracts had to be construed as a whole and it was impossible to ignore the opening words of cl. 9 in construing the penultimate line of cl. 6 and the reference in cl. 7 to loading and discharging berth meant "designated and procured berth" for it was to that berth the vessel would be moving, the time occupied by such movement being excluded from the laytime calculation (*see* p. 6, col. 1);

(2) "reachable on arrival" was a well-known phrase and meant precisely what it said; if a berth could not be reached on arrival the warranty was broken unless there was some relevant protecting exception and the berth was required to have two characteristics: it had to be safe and it also had to be reachable on arrival (*see* p. 6, col. 1);

(3) although the finding by the umpire that the sole cause of the delay to the vessel getting into berth was the unavailability of a berth due to presence of other vessels over which the charterers had no control was unequivocal, this fact did not avail the charterers unless the berth which the vessel was prevented from reaching by reason over which they had no control was one which had already been designated and procured by the charterers in accordance with cl. 9 (*see* p. 6, col. 1);

(4) cll. 6 and 9 were not in conflict with each other (*see* p. 6, col. 2);

(5) in the circumstances, the owners' claim for demurrage succeeded, the judgment of the learned Judge was entirely correct and the appeal would be allowed (*see* p. 5, col. 2; p. 6, col. 1).

The following cases were referred to in the judgment of Lord Roskill:

Aldebaran Compania Maritima S.A. v. Aussenhandel A.G. Zurich (*The Darrah*), (H.L.) [1976] 2 Lloyd's Rep. 359; [1977] A.C. 157;

North River Freighters v. H.E. President of India (*The Radnor*), (C.A.) [1955] 2 Lloyd's Rep. 668; [1956] 1 Q.B. 333;

Oldendorff (E.L.) & Co. G.m.b.H. v. Tradax Export S.A. (*The Johanna Oldendorff*), (H.L.) [1973] 2 Lloyd's Rep. 285; [1974] A.C. 479;

This was an appeal by the owners, Nereide S.p.A. di Navigazione from the decision of the Court of Appeal ([1981] 2 Lloyd's Rep. 24), allowing the appeal of the charterers, Bulk Oil International Ltd. from the decision of Mr. Justice Mocatta ([1980] 1 Lloyd's Rep. 466) given in favour of the owners and holding inter alia that the charterers had to bear the loss arising from the detention of the owners' vessel *Laura Prima* caused by congestion at the port.

Mr. Kenneth S. Rokison, Q.C. and Mr. Bernard Rix, Q.C. (instructed by Messrs. Richards, Butler & Co.) for the owners; Mr. Anthony Evans, Q.C. and Mr. S. Tomlinson (instructed by Messrs. Norton, Rose, Botterell & Roche) for the charterers.

The further facts are stated in the judgment of Lord Roskill.

Their Lordships indicated at the conclusion of the submissions that the shipowners' claim for demurrage succeeded but that their reasons would be given at a later date.

Thursday, Nov. 19, 1981

JUDGMENT

Lord DIPLOCK: My Lords, I have had the advantage of reading in draft the speech prepared by my noble and learned friend, Lord Roskill, and for the reasons he has given I too would allow the appeal.

Lord FRASER OF TULLYBELTON: My Lords, I have had the benefit of reading in draft the speech prepared by my noble and learned friend, Lord Roskill. I agree with it, and for the reasons stated therein I too would allow this appeal.

Lord SCARMAN: My Lords, I have had the advantage of reading in draft the speech to be delivered by my noble and learned friend, Lord Roskill. For the reasons he gives I would allow the appeal.

Lord ROSKILL: My Lords, once again your Lordships' House is invited to determine the incidence of liability as between shipowners and charterers under a voyage charter-party for delay in loading and discharging ports caused by congestion. In *E. L. Oldendorff & Co. G.m.b.H. v. Tradax Export S.A.* (*The Joanna Oldendorff*), [1973] 2 Lloyd's Rep. 285; [1974] A.C. 479, your Lordships' House considered at length the principles upon which that incidence should be determined with particular reference to the question when and where a ship becomes an "arrived ship" under a port charter so as to enable notice of readiness to be given and the laytime allowed for loading or discharging to start to count against the charterers. The analysis of the adventure contemplated by a voyage charter-party and its four successive stages made by my noble and learned friend Lord Diplock at pp. 304 to 308 and 556 to 561 of the reports relieves your Lordships' House from traversing once again the same ground for the determination of the instant appeal which, in my opinion, turns upon the answer to be given to a short question of construction of two clauses, cll. 6 and 9, in the now well-known Exxonvoy 1969 standard tanker voyage charter-party. In the subsequent case of *Aldebaran Compania Maritima S.A. Panama v. Aussenhandel A.G. Zurich* (*The Darrah*), [1976] 2 Lloyd's Rep. 359; [1977] A.C. 157, my noble and learned friend Lord Diplock emphasized at pp. 362 and 162 and 163 of the reports that in this context, as indeed in others, time is money and that it is therefore of commercial importance to the parties to provide how the resultant financial loss caused by delay in loading and discharging is to be borne, such delay by congestion being in recent years one of the most common causes of delay.

My Lords, the determination of the incidence of that financial loss must turn, as in the instant appeal, upon the true construction of the particular charter-party into which the parties have entered. Perusal of the long line of decisions both in the last and in the present century suggests a tendency to determine that true construction by reference to whether the particular charter-party under consideration can be designated a port or a berth charter. In cases where the parties have made no special provision that approach may still be valid. But today many charter-parties contain either as part of some standard form or as a special addition some express provision as to the incidence of financial loss if time which would otherwise be available for loading or discharging is wasted because the ship is obliged to await a vacant berth.

In those cases, of which *North River Freighters v. H.E. President of India* (*The Radnor*), [1955] 2 Lloyd's Rep. 668; [1956] 1 Q.B. 333 is the first in modern times, the well-known dichotomy between port and berth charters is likely to be irrelevant. As my noble and learned friend, the late Viscount Dilhorne, pointed out at pp. 367 and 171 of the reports of his speech in *The Darrah*, the decision in *The Radnor* did not turn upon any such distinction. In such cases where there is an express provision regarding the incidence of financial loss caused by the ship awaiting a vacant berth, it is difficult to see why the question whether the voyage charter under consideration is a port or a berth charter or whether, as in *The Radnor*, fine legalistic distinctions can be drawn between "To one safe berth Dairen" which was the wording there in question and "to Dairen, one safe berth" should in any way assist in ascertaining upon what incidence of financial loss the parties must be taken to have agreed in any particular case. If it be relevant I would regard the charter-party presently under consideration as a port charter rather than a berth charter but I do not think that this is any way determinative of the issue your Lordships have to consider.

My Lords, it is against the background of these preliminary observations that I turn to the present case. The dispute as I have already said arises under a standard tanker voyage charter-party in the Exxonvoy 1969 form. Your Lordships were invited to examine the lineage of this form and other forms, some in the line of descent others not in that line, were placed before your Lordships. My Lords, sometimes it is possible to detect from an alteration of clauses in standard forms an obvious intention to depart from a particular judicial decision the practical effect of which the parties wish to avoid. But I do not find any

assistance towards solving the instant problem in tracing the lineage of the Exxonvoy 1969 form. Its construction must be determined by reference to its own provisions and not to those of some of its predecessors.

The form is in three parts consisting of a preamble, Part I and Part II. The preamble and Part I are blank forms leaving the details to be filled in as appropriate. Part II contains the standard clauses, 26 in number, with a form of bill of lading attached. The present charter-party, which was concluded in Hamburg on Nov. 22, 1978, is remarkable in that unlike so many standard forms, the standard clauses have been wholly unamended, five special provisions being added in par. M of Part I. That part was duly completed and of its lettered provisions the following are now relevant:

> C. Loading Port(s) one safe berth Marsa El Hariga.
>
> D. Discharging Port(s) one/two safe port(s) West Coast Italy including Islands . . .
>
> H. Total Laytime in Running Hours seventy-two sh inc. [that is to say, Sundays and holidays included]
>
> I. Demurrage per day US$33,247.50 . . .
>
> K. The place of . . . arbitration proceedings to be London English law to apply.

Of the standard clauses, cll. 6, 7, 8, and 9 alone are relevant. As already stated, the all-important clauses are cll. 6 and 9, but for ease of reference I set all four clauses out in full.

> 6. NOTICE OF READINESS. Upon arrival at customary anchorage at each port of loading or discharge, the Master or his agent shall give the Charterer or his agent notice by letter, telegraph, wireless or telephone that the Vessel is ready to load or discharge cargo, berth or no berth, and laytime, as hereinafter provided, shall commence upon the expiration of six (6) hours after receipt of such notice, or upon the Vessel's arrival in berth (i.e., finished mooring when at a sealoading or discharging terminal and all fast when loading or discharging alongside a wharf), whichever first occurs. However, where delay is caused to vessel getting into berth after giving notice of readiness for any reason over which Charterer has no control, such delay shall not count as used laytime.
>
> 7. HOURS FOR LOADING AND DISCHARGING. The number of running hours specified as laytime in Part I shall be permitted the Charterer as laytime for loading and discharging cargo; but any delay due to the Vessel's condition or breakdown or inability of the Vessel's facilities to load or discharge cargo within the time allowed shall not count as used laytime. If regulations of the Owner or port authorities prohibit loading or discharging of the cargo at night, time so lost shall not count as used laytime; if the Charterer, shipper or consignee prohibits loading or discharging at night, time so lost shall count as used laytime. Time consumed by the vessel on moving from loading or discharge port anchorage to her loading or discharge berth, discharging ballast water or slops, will not count as used laytime.
>
> 8. DEMURRAGE. Charterer shall pay demurrage per running hour and pro rata for a part thereof at the rate specified in Part I for all time that loading and discharging and used laytime as elsewhere herein provided exceeds the allowed laytime elsewhere herein specified. If, however, demurrage shall be incurred at ports of loading and/or discharge by reason of fire, explosion, storm or by a strike, lockout, stoppage or restraint of labor or by breakdown of machinery or equipment in or about the plant of the Charterer, supplier, shipper or consignee of the cargo, the rate of demurrage shall be reduced one-half of the amount stated in Part I per running hour or pro rata for part of an hour for demurrage so incurred. The Charterer shall not be liable for any demurrage for delay caused by strike, lockout, stoppage or restraint of labor for Master, officers and crew of the Vessel or tugboat or pilots.
>
> 9. SAFE BERTHING-SHIFTING. The vessel shall load and discharge at any safe place or wharf, or alongside vessels or lighters reachable on her arrival, which shall be designated and procured by the Charterer, provided the Vessel can proceed thereto, lie at, and depart therefrom always safely afloat, any lighterage being at the expense, risk and peril of the Charterer. The Charterer shall have the right of shifting the Vessel at ports of loading and/or discharge from one safe berth to another on payment of all towage and pilotage shifting to next berth, charges for running lines on arrival at and leaving that berth, additional agency charges and expense, customs overtime and fees, and any other extra port charges or port expenses incurred by reason of using more than one berth. Time consumed on account of shifting shall count as used laytime except as otherwise provided in Clause 15.

The simple facts which give rise to the present dispute were as follows. *Laura Prima* arrived at her Libyan loading port at 01 40 hours on Nov. 27, 1978. She gave the six hours' notice of readiness for which provision was made by

cl. 6. That notice expired at 07 40 hours on the same day. She could not, however, proceed to a loading berth at once since all possible loading berths were occupied by other vessels. This remained the position until 16 30 hours on Dec. 6, 1978, some nine days later. The shipowners claimed that *Laura Prima* came on demurrage at 07 40 hours on Nov. 30, 1978, this being 72 hours after the expiry of the notice of readiness, and remained on demurrage until 19 00 hours on Dec. 8, 1978, when loading was completed, the relevant period on demurrage at the loading port being eight days 11 hours 20 minutes. On this basis *Laura Prima* was on demurrage when she reached Sarroch, her Sardinian discharging port. There was a further claim for demurrage for two days eight hours 30 minutes there making a total demurrage claim of 10 days 19 hours 50 minutes which when quantified, amounted gross to U.S. $59,950.46 and net to U.S. $355,451.08, the amount of the shipowners' actual demurrage claim. In the alternative the shipowners advanced a slightly smaller claim for damages for detention for breach of cl. 9 totalling U.S. $307,913.05. The relevant time sheets will be found at pp. 12 and 13 of the appendix. The charterers claimed to be protected against these claims by the last sentence of cl. 6, contending that all the loading port delay was caused by congestion over which they had no control.

The resulting dispute was referred to arbitration in London. The two arbitrators disagreed. Mr. Bruce Harris as umpire rejected the shipowners' claim in its entirety. He stated his award in the form of a special case and most helpfully, in pars. 13, 14, and 15 of that special case, gave his reasons. I hope I do their clear expression no injustice if I summarize them by saying that he was of the opinion that the last sentence of cl. 6 was very clear and protected the charterers against the demurrage claim since he had found as a fact, in par. 8 of the special case, that—

> . . . the sole cause of the delay to the ship getting into berth until [1640 hours on 6th December 1978] was the unavailability of a berth due to the presence of other ships for which the charterers were not responsible, it not being in any way within their control.

As regards the alternative claim for damages, Mr. Harris held that though the charterers were in breach of cl. 9, they could offset against any resultant claim for damages the time lost during any periods which, by reason of cl. 6, were exempted from counting as laytime.

The umpire made alternative awards in favour of the shipowners according to whether it was ultimately held that they were entitled to demurrage or damages.

The special case was argued before Mr. Justice Mocatta. On Dec. 12, 1979, the learned Judge upheld the alternative award for demurrage and, rightly in my opinion, did not deal with the alternative claim for damages (*see* [1980] 1 Lloyd's Rep. 466). The charterers appealed to the Court of Appeal (Lords Justices Lawton, O'Connor and Fox) who, in a judgment delivered by Lord Justice Lawton on Apr. 2, 1981, reversed the learned Judge's decision and restored the umpire's award, essentially for the same reasons as the umpire had given, namely that cl. 6 protected directly against the demurrage claim and in effect against a claim for damages for breach of cl. 9 (*see* [1981] 2 Lloyd's Rep. 24). Your Lordships' House subsequently gave leave to appeal against their decision.

My Lords, both parties have lodged elaborate printed cases. The appellants' case occupies no less than 16 printed pages and 21 paragraphs. The respondents' case occupies no less than 19 printed pages and 31 paragraphs. But the matter for decision is very short and might perhaps be thought hardly worthy of such industrious productivity. Since, as was indicated after the conclusion of the submissions before your Lordships' House, all your Lordships were of the opinion that the shipowners' claim for demurrage succeeded, that the judgment of Mr. Justice Mocatta was entirely correct and that accordingly the appeal should be allowed, your Lordships did not invite argument from Counsel upon the alternative claim for breach of cl. 9 which could only arise if the claim for demurrage failed because the charterers were protected against that claim by the last sentence of cl. 6. I therefore express no view upon the question whether, had the demurrage claim failed, the damages claim would have succeeded. That question must await decision if and when it arises.

My Lords, in his judgment Mr. Justice Mocatta summarized the argument for the shipowners which he accepted as being that cl. 6 only applied and protected the charterers and prevented laytime from running if the charterers, pursuant to their obligations under cl. 9, had designated and procured a safe place or wharf or vessels or lighters reachable on arrival. Then if some intervening event occurred causing delay over which the charterers had no control the last sentence of cl. 6 applied to protect them.

Mr. Rokison, Q.C., for the shipowners, in effect adopted this submission and put it in the forefront of his argument. The same point may perhaps be expressed in slightly different

此为试读,需要完整PDF请访问: www.ertongbook.com