



# LLOYD'S LAW REPORTS

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## CASES JUDICIALLY CONSIDERED

	PAGE
<i>Apollon, The</i> — <i>Applied</i>	[1983] 1 Lloyd's Rep. 409 ..... 496
<i>Apollo, The</i> — <i>Applied</i>	[1978] 1 Lloyd's Rep. 200 ..... 66
Astro Valiente Compania Naviera S.A. v. Government of Pakistan Ministry of Food and Agriculture (No. 2)— <i>Not followed.</i>	[1982] 1 Lloyd's Rep. 286 ..... 592
Chandris v. Argo Insurance Co. Ltd.— <i>Applied</i>	[1963] 2 Lloyd's Rep. 65 ..... 376
<i>Charalambos N Pateras, The</i> — <i>Applied</i>	[1972] 1 Lloyd's Rep. 1 ..... 18
Commonwealth Construction Co. Ltd. v. Imperial Oil Ltd. — <i>Applied</i>	69 D.L.R. 3rd 558 (1977) ..... 91
Conquer v. Boot— <i>Applied</i>	[1928] 2 K.B. 336 ..... 351
Czarnikow (C.) Ltd. v. Centrala Handlu Zagranicznego Rolimpez— <i>Applied</i>	[1978] 2 Lloyd's Rep. 305 ..... 171
Dias Compania Naviera S.A. v. Louis Dreyfus Corporation— <i>Applied</i>	[1978] 1 Lloyd's Rep. 325 ..... 496
Eagle Star Insurance Co. Ltd. v. Yuval Insurance Co. Ltd.— <i>Considered.</i>	[1978] 1 Lloyd's Rep. 357 ..... 674
<i>El Amria, The</i> — <i>Applied</i>	[1981] 2 Lloyd's Rep. 119 ..... 394
<i>El Amria, The</i> — <i>Applied</i>	[1981] 2 Lloyd's Rep. 119 ..... 59
<i>England, The</i> — <i>Considered.</i>	[1973] 1 Lloyd's Rep. 373 ..... 156
Galaxia Maritime S.A. v. Mineralimportexport — <i>Considered</i>	[1982] 1 Lloyd's Rep. 351 ..... 204
Glyn Mills & Co. v. Currie— <i>Considered</i>	(1882) 7 App. Cas. 591 ..... 548
<i>Hannah Blumenthal, The</i> — <i>Applied</i>	[1983] 1 Lloyd's Rep. 103 ..... 411
Hogarth Shipping Co. v. Blythe Green Jourdain & Co. Ltd.— <i>Applied.</i>	[1917] 2 K.B. 534 ..... 592
Ian Stach Ltd. v. Baker Bosly Ltd.— <i>Considered.</i>	[1958] 1 Lloyd's Rep. 127 ..... 679
<i>Lady Gwendolen, The</i> — <i>Considered</i>	[1965] 1 Lloyd's Rep. 335 ..... 156
Millichamp and Others v. Jones— <i>Applied</i>	[1982] 1 W.L.R. 1422 ..... 522
<i>Morviken, The</i> — <i>Applied</i>	[1983] 1 Lloyd's Rep. 1 ..... 50
<i>Norman, The</i> — <i>Considered</i>	[1960] 1 Lloyd's Rep. 1 ..... 156
<i>Nema, The</i> — <i>Applied</i>	[1981] 2 Lloyd's Rep. 239 ..... 424
<i>Nuova Raffaelina, The</i> — <i>Applied</i>	(1871) 3 A & E 483 ..... 310
<i>Odenfeld, The</i> — <i>Applied.</i>	[1978] 2 Lloyd's Rep. 357 ..... 645
<i>Puerto Buitrago, The</i> — <i>Applied.</i>	[1976] 1 Lloyd's Rep. 250 ..... 645
Rickards v. Oppenheim— <i>Applied.</i>	[1950] 1 K.B. 616 ..... 679

CASES JUDICIALLY CONSIDERED—*continued*

	PAGE
Serraino & Sons v. Campbell— <i>Applied</i> .	[1891] 1 Q.B. 283 ..... 592
<i>Splendid Sun</i> , The— <i>Applied</i>	[1981] 2 Lloyd's Rep. 29 ..... 411
<i>Tillie Lykes</i> , The— <i>Considered</i>	[1977] 1 Lloyd's Rep. 124 ..... 279
Tomlinson (A) (Hauliers) Ltd. v. Hepburn — <i>Applied</i>	[1966] 1 Lloyd's Rep. 309..... 91
Thomas (T.W.) & Co. Ltd. v. Portsea Steamship Co. Ltd.— <i>Applied</i> .	[1912] A.C. 1 ..... 592
Thomson (D.C.) & Co. v. Deakin — <i>Applied</i>	[1952] Ch. 646 ..... 1
White & Carter (Councils) Ltd. v. McGregor— <i>Applied</i> .	[1962] 2 A.C. 413 ..... 645

## STATUTES CONSIDERED

---

	PAGE
 NEW ZEALAND—	
CUSTOMS ACT 1913-1966 .....	265
HISTORIC ARTICLES ACT, 1962 .....	265
 UNITED KINGDOM—	
ADMINISTRATION OF JUSTICE ACT, 1970	
s. 44 .....	434
ARBITRATION ACT, 1950	
s. 12 (1) .....	346
s. 23 (1) .....	70
s. 25 (2) (b) .....	70
ARBITRATION ACT, 1975	
s. 1 .....	35, 592
ARBITRATION ACT, 1979	
s. 1 (5) .....	35
s. 2 .....	346
s. 3 (1) .....	419
BILLS OF LADING ACT, 1855	
s. 1 .....	640
CIVIL JURISDICTION AND JUDGMENTS ACT, 1982	
s. 32 .....	384
s. 33 .....	384
EMPLOYMENT ACT, 1980	
s. 17 .....	1
JUDGMENT ACT, 1838	
s. 17 .....	434
LONDON COUNTY COUNCILS (IMPROVEMENT) ACT, 1962	
s. 17 .....	117
s. 50 .....	117
MARINE INSURANCE ACT, 1906 .....	365
MARITIME CONVENTIONS ACT, 1911	
s. 8 .....	195
MERCHANT SHIPPING ACT, 1894	
s. 503 .....	156
MERCHANT SHIPPING (LIABILITY OF SHIPOWNERS AND OTHERS) ACT, 1958	
s. 2 (1) .....	156
PORT OF LONDON ACT, 1968	
s. 66 (1) (b) .....	117
SUPREME COURT ACT, 1981	
s. 20 (1) .....	313
s. 20 2 (h) .....	310
s. 20 (2) (h) (m) (n) .....	63
TRADE UNION AND LABOUR RELATIONS ACT, 1974	
s. 13 .....	1

# CONTENTS

**NOTE: These Reports should be cited as  
"1983 2 Lloyd's Rep."**

	COURT	PAGE
A v. B (X Intervening) .....	[Q.B. (Com. Ct.)]	532
<i>Abidin Daver</i> , The.....	[C.A.]	279
Achille Lauro Lines S.R.L. and Marine General Transporters Corporation:—Howard Houlder & Partners Ltd. and Banchero-Costa & Companera S.p.A. v. ....	[Q.B. (Com. Ct.)]	653
Administratia Asigurarilor de Stat:—Home Insurance Co. and St. Paul Fire and Marine Insurance Co. v. ....	[Q.B. (Com. Ct.)]	674
<i>Admiral Zmajevic</i> , The .....	[Q.B. (Com. Ct.)]	86
<i>Aegis Progress</i> , The .....	[Q.B. (Com. Ct.)]	570
Agip S.p.A. v. Navigazione Alta Italia S.p.A. (The <i>Nai Genova</i> and <i>Nai Superba</i> ) .....	[Q.B. (Com. Ct.)]	333
Aiden Shipping Co. Ltd.:—Interbulk Ltd. v. ....	[Q.B. (Com. Ct.)]	424
<i>Aiolos</i> , The .....	[C.A.]	25
Air Express International Corporation and Others:—Data Card Corporation and Others v. ....	[Q.B. (Com. Ct.)]	81
Aktieselskabet de Danske Sukkerfabrikker v. Bajamar Compania Naviera S.A. (The <i>Torenia</i> ) .....	[Q.B. (Com. Ct.)]	210
<i>Alaskan Trader</i> , The .....	[Q.B. (Com. Ct.)]	645
<i>Albany</i> and <i>Marie Josaine</i> , The .....	[Q.B. (Adm. Ct.)]	195
<i>Allden</i> v. <i>Raven</i> (The <i>Kylie</i> ) .....	[Q.B.]	444
Allied Marine Transport Ltd. v. Vale Do Rio Doce Navegação S.A. (The <i>Leonidas D</i> ) .....	[Q.B. (Com. Ct.)]	411
Alltrans Group of Canada Ltd.:—Tor Line A.B. v. ....	[C.A.]	18
<i>Al Wahab</i> , The .....	[H.L.]	365
American Smelting and Refining Co. and Others:—Jugoslavenska Oceanska Plovidba v. ....	[Q.B. (Com. Ct.)]	86
Amin Rasheed Shipping Corporation v. Kuwait Insurance Co. (The <i>Al Wahab</i> ).....	[H.L.]	369
Antaios Compania Naviera S.A. v. Salen Rederierna A.B. (The <i>Antioas</i> ) (No. 2).....	[C.A. + Q.B. (Com. Ct.)]	473
<i>Antaios</i> , The (No. 2).....	[C.A. + Q.B. (Com. Ct.)]	473
<i>Antonis P Lemos</i> , The.....	[Q.B. (Com. Ct.)]	310
Arab African Energy Corp. Ltd. v. Olieprodukten Nederland BV. ....	[Q.B. (Com. Ct.)]	419
<i>Arta</i> , The .....	[Q.B. (Com. Ct.)]	405
A/S Sea Team:—Chevron International Oil Co. Ltd. v. ....	[Q.B. (Com. Ct.)]	356
Astro Dinamico Compania Naviera S.A. and Georgian Shipping Enterprises S.A.:—Williams & Glyn's Bank Ltd. v. ....	[C.A.]	485
Ataka Navigation Inc. v. Mineralimportexport .....	[Q.B. (Com. Ct.)]	204
Atisa S.A. v. Aztec A.G. ....	[Q.B. (Com. Ct.)]	579
<i>Atlantic Song</i> , The .....	[Q.B. (Com. Ct.)]	394
Attorney-General of New Zealand v. George Ortiz, Sotheby Parke Bernet & Co. and Lance Entwistle .....	[H.L.]	265
Aztec A.G.:—Atisa S.A. v. ....	[Q.B. (Com. Ct.)]	579
Bajamar Compania Naviera S.A.:—Aktieselskabet de Danske Sukkerfabrikker v. ....	[Q.B. (Com. Ct.)]	210
Banchero-Costa & Companera S.p.A. and Howard Houlder & Partners Ltd. v. Marine General Transporters Corporation and Achille Lauro Lines S.R.L. ....	[Q.B. (Com. Ct.)]	653

CONTENTS—*continued*

	COURT	PAGE
Bank Mellat and Mahnakh Spinning and Weaving Corporation:—Dow Banking Corporation v.....	[Q.B. (Com. Ct.)]	561
Bank of India v. Trans Continental Commodity Merchants Ltd. and Jashbai Nagjibhai Patel .....	[C.A.]	298
<i>Barkenstein</i> , The .....	[Q.B. (Com. Ct.)]	522
Belcore Maritime Corporation v. F.Lli. Moretti Cereali S.p.A. (The <i>Mastro Giorgis</i> ) .....	[Q.B. (Com. Ct.)]	66
<i>Benarty</i> , The .....	[Q.B. (Adm. Ct.)]	50
<i>Birtenstein</i> , The .....	[Q.B. (Com. Ct.)]	522
<i>Biskra</i> , The .....	[Q.B. (Adm. Ct.)]	59
<i>Blankenstein</i> , <i>Bartenstein</i> and <i>Birkenstein</i> , The .....	[Q.B. (Com. Ct.)]	522
Bremer Handelsgesellschaft m.b.H. v. Deutsche-Conti Handelsgesellschaft m.b.H. ....	[C.A.]	45
Bridge (George) and Sudan Oil Seeds Co. Ltd.:—Tracomina S.A. v.....	[C.A.]	624
British Bank of the Middle East v. Sun Life Assurance of Canada (U.K.) Ltd. ....	[H.L.]	9
Bulk Oil International Ltd.:—Clea Shipping Corporation v. ....	[Q.B. (Com. Ct.)]	645
Bulk Oil (Zug) A.G. v. Sun International Ltd. and Sun Oil Trading Co. ....	[C.A.]	587
B.V. Oliehandel Jongkind v. Coastal International Ltd. ....	[Q.B. (Com. Ct.)]	463
B (X Intervening):—A v.....	[Q.B. (Com. Ct.)]	532
B:—X, Y and Z v. ....	[Q.B. (Com. Ct.)]	535
Cargill Inc. v. Marpro Ltd. (The <i>Aegis Progress</i> ) .....	[Q.B. (Com. Ct.)]	570
<i>Caroline P</i> , The .....	[Q.B. (Com. Ct.)]	351
Carras Shipping Co. Ltd.:—The Food Corporation of India v. ....	[Q.B. (Com. Ct.)]	496
Castle Insurance Co. Ltd. v. Hong Kong Islands Shipping Co. Ltd. (The <i>Potoi Chau</i> ) .....	[P.C.]	376
Central Insurance Co. Ltd. v. Seacalf Shipping Corporation (The <i>Aiolos</i> ).....	[C.A.]	25
<i>Chevalier Roze</i> , The .....	[Q.B. (Com. Ct.)]	438
Chevron International Oil Co. Ltd. v. A/S Sea Team (The <i>T.S. Havprins</i> ) .....	[Q.B. (Com. Ct.)]	356
Clea Shipping Corporation v. Bulk Oil International Ltd. (The <i>Alaskan Trader</i> ) .....	[Q.B. (Com. Ct.)]	645
Coastal International Ltd.:—B.V. Oliehandel Jongkind v. ....	[Q.B. (Com. Ct.)]	463
Cobec Brazilian Trading and Warehousing Corporation v. Alfred C. Toepfer .....	[C.A.]	386
Compagnie Francaise D'Importation et De Distribution:—State Trading Corporation of India Ltd. v. ....	[Q.B. (Com. Ct.)]	679
Continental Grain Co. v. Islamic Republic of Iran Shipping Lines and Government Trading Corporation of Iran (The <i>Iran Bohonar</i> ) .....	[C.A.]	620
Damon Compania Naviera S.A. v. Hapag Lloyd International S.A. (The <i>Blankstein</i> , <i>Bartenstein</i> and <i>Birkenstein</i> ) .....	[Q.B. (Com. Ct.)]	522
Data Card Corporation and Others v. Air Express International Corporation and Others .....	[Q.B. (Com. Ct.)]	81
Deerness v. John R. Keeble & Son (Brantham) Ltd. and Another .....	[H.L.]	260
<i>Delian Leto</i> , The .....	[Q.B. (Com. Ct.)]	496
Deutsche-Conti Handelsgesellschaft m.b.H.:—Bremer Handelsgesellschaft m.b.H. v. ....	[C.A.]	45
Dixon (P.S.) and Another:—P.C.W. (Underwriting Agencies) Ltd. v. ....	[Q.B. (Com. Ct.)]	197
Dow Banking Corporation v. Mahnakh Spinning and Weaving Corporation and Bank Mellat .....	[Q.B. (Com. Ct.)]	561
Edmunds (Herbert David):—Rhesa Shipping Co. S.A. v. ....	[Q.B. (Com. Ct.)]	235
Elder Dempster Lines v. Zaki Ishag (The <i>Lycaon</i> ) .....	[Q.B. (Com. Ct.)]	548



CONTENTS—*continued*

	COURT	PAGE
Empresa Exportadora de Azucar v. Industria Azucarera Nacional S.A. (The <i>Playa Larga</i> and <i>Marble Islands</i> ) .....	[C.A.]	171
<i>Enskeri, Tiiskeri</i> and <i>Nestegas</i> , The .....	[Q.B. (Com. Ct.)]	658
Entwistle (Lance), Sotheby Parke Bernet & Co. and George Ortiz:—Attorney General of New Zealand v. ....	[H.L.]	265
European Grain & Shipping Ltd.:—Tradax Export S.A. v. ....	[Q.B. (Com. Ct.)]	100
Eximenco Handels A.G. v. Partrederiet Oro Chief and Levantes Maritime Corporation (The <i>Oro Chief</i> ) .....	[Q.B. (Com. Ct.)]	509
Export Credits Guarantee Department:—Kent Engineering Foundry Ltd. v. ....	[Q.B.]	556
Export Credits Guarantee Department v. Universal Oil Products Co., Procon Inc. and Procon (Great Britain) Ltd. ....	[H.L.]	152
Farid (Saleh) v. Mackinnon Mackenzie & Co. Ltd. (The <i>Sheba</i> and <i>Shamsan</i> ) .....	[Q.B. (Com. Ct.)]	500
Fenton Insurance Co. Ltd.:—Rhesa Shipping Co. S.A. v. ....	[Q.B. (Com. Ct.)]	235
Finney Lock Seeds Ltd.:—George Mitchell (Chesterhall) Ltd. v. ....	[H.L.]	272
F.Lli. Moretti Cereali S.p.A.:—Belcore Maritime Corporation v. ....	[Q.B. (Com. Ct.)]	66
Flota Petrolera Ecuatoriana:—Scandinavian Trading Tanker Co. A.B. v. ....	[H.L.]	253
Food Corporation of India v. Carras Shipping Co. Ltd. (The <i>Delian Leto</i> ) .....	[Q.B. (Com. Ct.)]	496
Forsakringsaktiebolaget Fennia Patria:—General Reinsurance Corporation and Others v. ....	[C.A.]	287
General Reinsurance Corporation and Others v. Forsakringsaktiebolaget Fennia Patria .....	[C.A.]	287
Georgian Shipping Enterprises S.A. and Astro Dinamico Compania Naviera S.A.:—Williams & Glyn's Bank Ltd. v. ....	[C.A.]	485
Government Trading Corporation of Iran and Islamic Republic of Iran Shipping Lines:—Continental Grain Co. v. ....	[C.A.]	620
Greater London Council:—Tate & Lyle Industries Ltd. v. ....	[H.L.]+[C.A.]	117
Hadjipateras and Another:—Israel Discount Bank v. ....	[C.A.]	490
Hair v. Prudential Assurance Co. Ltd. ....	[Q.B.]	667
Hapag-Lloyd International S.A.:—Damon Compania Naviera S.A. v. ....	[Q.B. (Com. Ct.)]	522
<i>Hoegh Apapa</i> , The .....	[H.L.]	1
Holborn Oil Trading Ltd.:—Miramar Maritime Corporation v. ....	[Q.B. (Com. Ct.)]	319
Home Insurance Co. and St. Paul Fire and Marine Insurance Co. v. Administratia Asigurarilor de Stat. ....	[Q.B. (Com. Ct.)]	674
Hong Kong Islands Shipping Co. Ltd.:—Castle Insurance Co. Ltd. v. ....	[P.C.]	376
Howard Houlder & Partners Ltd. and Banchemo-Costa & Companera S.p.A. v. Marine General Transporters Corporation and Achille Lauro Lines S.R.L. (The <i>Panaghia P</i> ) .....	[Q.B. (Com. Ct.)]	653
I.C.C.O. International Corn Co. N.V. v. Interbulk Ltd. (The <i>Vimeira</i> ) .....	[Q.B. (Com. Ct.)]	424
Industria Azucarera Nacional S.A.:— Empresa Exportadora de Azucar v. ....	[C.A.]	171
Inersea Carriers S.A.:—Telfair shipping Corporation v. ....	[Q.B. (Com. Ct.)]	351
Interbulk Ltd. v. Aiden Shipping Co. Ltd. (The <i>Vimeira</i> ) .....	[Q.B. (Com. Ct.)]	424
Interbulk Ltd.:—I.C.C.O. International Corn Co. N.V. v. ....	[Q.B. (Com. Ct.)]	424
<i>Iran Bohonar</i> , The .....	[C.A.]	620
Iraq National Oil Co. and Others:—K/S A/S Seateam & Co. v. ....	[Q.B. (Com. Ct.)]	640
Irish National Insurance Co. Ltd. and Sedgwick Ltd. v. Oman Insurance Co. Ltd. ....	[Q.B. (Com. Ct.)]	453
Ishag (Zaki):—Elder Dempster Lines v. ....	[Q.B. (Com. Ct.)]	548



CONTENTS—*continued*

	COURT	PAGE
Islamic Republic of Iran Shipping Lines and Government Trading Corporation of Iran:—Continental Grain Co. v.	[C.A.]	620
Israel Discount Bank v. Costa A. Hadjipateras and George C. Hadjipateras	[C.A.]	490
Italgrani di Francesco Ambrosio:—Tradax Export S.A. v. ....	[Q.B. (Com. Ct.)]	109
Italgrani di Francesco Ambrosio v. Sosimage S.p.A.	[Q.B. (Com. Ct.)]	109
<i>Jalakrishna</i> , The	[Q.B. (Adm. Ct.)]	628
Jugoslavenska Oceanska Plovidba v. American Smelting and Refining Co. and Others (The <i>Admiral Zmajevic</i> )	[Q.B. (Com. Ct.)]	86
J.V.C. (UK) Ltd.:—Neptune Orient Lines Ltd. v. ....	[Q.B. (Com. Ct.)]	438
Keeble & Son (Brantham) Ltd. and Another:—Deerness v. ....	[H.L.]	260
Kent Engineering & Foundry Ltd. v. The Export Credits Guarantee Department	[Q.B.]	556
K/S A/S Seateam & Co. v. Iraq National Oil Co. and Others (The <i>Sevoniam Team</i> )	[Q.B. (Com. Ct.)]	640
Kuwait Insurance Co.:—Amin Rasheed Shipping Corporation v.	[H.L.]	365
Kylie, The	[Q.B.]	444
<i>Larissa</i> , The	[Q.B. (Com. Ct.)]	325
Laughton, Shaw and Lewis:—Merkur Island Shipping Corporation v.	[H.L.]	1
<i>Leonidas D</i> , The	[Q.B. (Com. Ct.)]	411
Levantes Maritime Corporation and Partrederiet Oro Chief:—Eximenco Handels A.G. v.	[Q.B. (Com. Ct.)]	509
Lewis, Laughton and Shaw:—Merkur Island Shipping Corporation v.	[H.L.]	1
<i>Lloydiana</i> , The	[Q.B. (Com. Ct.)]	313
Lloyds Bank plc.:—Neste Oy v.	[Q.B. (Com. Ct.)]	658
<i>Lycaon</i> , The	[Q.B. (Com. Ct.)]	548
Mackinnon Mackenzie & Co. Ltd.:—Saleh Farid v.	[Q.B. (Com. Ct.)]	500
Magnaload Ltd. and Others:—Petrofina (U.K.) Ltd. and Others v.	[Q.B. (Com. Ct.)]	91
Mahnakh Spinning and Weaving Corporation and Bank Mellat:—Dow Banking Corporation v.	[Q.B. (Com. Ct.)]	561
<i>Marble Islands</i> and <i>Playa Larga</i> , The	[C.A.]	171
<i>Marie Josaine</i> and <i>Albany</i> , The	[Q.B. (Com. Ct.)]	195
Marine General Transporters Corporation and Achille Lauro Lines S.R.L.:—Howard Houlder & Partners Ltd. and Banchemo-Costa & Companera S.p.A. v.	[Q.B. (Com. Ct.)]	653
<i>Marion</i> , The	[C.A.]	156
Markappa Inc. v. N. W. Spratt & Son Ltd. (The <i>Arta</i> )	[Q.B. (Com. Ct.)]	405
Maravan S.A. of Caracas:—Showa Oil Tanker Co. Ltd. of Japan v.	[Q.B. (Com. Ct.)]	325
Marpro Ltd.:—Cargill Inc. v.	[Q.B. (Com. Ct.)]	570
<i>Mastro Giorgis</i> , The	[Q.B. (Com. Ct.)]	66
<i>Mata Hari</i> , The	[Q.B. (Com. Ct.)]	449
Merkur Island Shipping Corporation v. Laughton Shaw and Lewis (The <i>Hoegh Apapa</i> )	[H.L.]	1
Mineralimportexport:—Ataka Navigation Inc. v.	[Q.B. (Com. Ct.)]	204
Mineralimportexport:—Oceanica Castelana Armadora v.	[Q.B. (Com. Ct.)]	204
<i>Minoan Bull</i> , <i>Theotokos</i> and <i>Tirgu Frumos</i> , The	[Q.B. (Com. Ct.)]	204
Miramar Maritime Corporation v. Holborn Oil Trading Ltd. (The <i>Miramar</i> )	[Q.B. (Com. Ct.)]	319
<i>Miramar</i> , The	[Q.B. (Com. Ct.)]	319
Mitchell (George) (Chesterhall) Ltd. v. Finney Lock Seeds (Ltd.)	[H.L.]	272

## CONTENTS—continued

	COURT	PAGE
<i>Nai Genova</i> and <i>Nai Superba</i> , The .....	[Q.B. (Com. Ct.)]	333
<i>Navigazione Alta Italia S.p.A.</i> :— <i>Agip S.p.A. v.</i> .....	[Q.B. (Com. Ct.)]	333
<i>Neptune Orient Lines Ltd. v. J.V.C. (UK) Ltd. (The Chevalier Rose)</i> .....	[Q.B. (Com. Ct.)]	438
<i>Nestegas, Tiiskeri</i> and <i>Enskeri</i> , The .....	[Q.B. (Com. Ct.)]	658
<i>Neste Oy v. Lloyds Bank plc. (The Tiiskeri, Nestegas and Enskeri)</i> .....	[Q.B. (Com. Ct.)]	658
<i>Niedersachsen</i> , The .....	[C.A.+ Q.B. (Com. Ct.)]	600
<i>Ninemia Maritime Corporation v. Trave Schiffahrtsgesellschaft m.b.H. und Co. K.G. (The Niedersachsen)</i> .....	[C.A.+ Q.B. (Com. Ct.)]	600
<i>Oceanica Castelana Armadora v. Mineralimportexport (The Theotokos, Minoan Bull and Tirgu Frumos)</i> .....	[Q.B. (Com. Ct.)]	204
<i>Olieprodukten Nederland BV</i> :— <i>Arab African Energy Corp. Ltd. v.</i> .....	[Q.B. (Com. Ct.)]	419
<i>Oman Insurance Co. Ltd.</i> :— <i>Irish National Insurance Co. Ltd. and Sedgwick Ltd. v.</i> .....	[Q.B. (Com. Ct.)]	453
<i>O'Reilly</i> :— <i>Stockport Metropolitan Borough Council v.</i> .....	[Q.B. (Com. Ct.)]	70
<i>Oro Chief</i> , The .....	[Q.B. (Com. Ct.)]	509
<i>Ortiz (George)</i> , <i>Sotheby Parke Bernet &amp; Co. and Lance Entwistle</i> :— <i>The Attorney General of New Zealand v.</i> ....	[H.L.]	265
<i>Panaghia P</i> , The .....	[Q.B. (Com. Ct.)]	653
<i>Pancommerce S.A. v. Veecheema B.V.</i> .....	[C.A.]	304
<i>Partrederiet Oro Chief and Levantes Maritime Corporation</i> :— <i>Eximenco Handels A.G. v.</i> .....	[Q.B. (Com. Ct.)]	509
<i>Patel (Jashbai Nagjibhai) and Trans Continental Commodity Merchants Ltd.</i> :— <i>Bank of India v.</i> .....	[C.A.]	298
<i>P.C.W. (Underwriting Agencies) Ltd. v. P. S. Dixon and Another</i> .....	[Q.B. (Com. Ct.)]	197
<i>Petrofina S.A. and Syrian Petroleum Co. Ltd.</i> :— <i>Skips A/S Nordheim and Others v.</i> .....	[C.A.]	592
<i>Petrofina (U.K.) Ltd. and Others v. Magnaload Ltd. and Others</i> .....	[Q.B. (Com. Ct.)]	91
<i>Pindaros</i> , The .....	[Q.B. (Adm. Ct.)]	635
<i>Pindos Shipping Corporation v. Frederick Charles Raven (The Mata Hari)</i> .....	[Q.B. (Com. Ct.)]	449
<i>Playa Larga and Marble Islands</i> , The .....	[C.A.]	171
<i>Popi M.</i> , The .....	[Q.B. (Com. Ct.)]	235
<i>Potoi Chau</i> , The .....	[P.C.]	376
<i>Procon Inc., Procon (Great Britain) Ltd. and Universal Oil Products Co.</i> :— <i>Export Credits Guarantee Department v.</i> .....	[H.L.]	152
<i>Prudential Assurance Co. Ltd.</i> :— <i>Hair v.</i> .....	[Q.B.]	667
<i>Qatar Petroleum Producing Authority and Qatar General Petroleum Corporation v. Shell Internationale Petroleum Maatschappij B.V. and Whessoe Ltd.</i> .....	[C.A.]	35
<i>Raven</i> :— <i>Allden v.</i> .....	[Q.B.]	444
<i>Raven (Frederick Charles)</i> :— <i>Pindos Shipping Corporation v.</i> ....	[Q.B. (Com. Ct.)]	449
<i>Rhesa Shipping Co. S.A. v. Fenton Insurance Co. Ltd.</i> .....	[Q.B. (Com. Ct.)]	235
<i>Rhesa Shipping Co. S.A. v. Herbert David Edmunds (The Popi M.)</i> .....	[Q.B. (Com. Ct.)]	235
<i>Rocco Giuseppe &amp; Figli v. Tradax Export S.A.</i> .....	[Q.B. (Com. Ct.)]	434
<i>Romanian Bank for Foreign Trade</i> :— <i>Seawind Maritime Inc. v.</i> .....	[Q.B. (Com. Ct.)]	204
<i>St. Paul Fire and Marine Insurance Co. and Home Insurance Co. v. Administratia Asigurarilor de Stat.</i> .....	[Q.B. (Com. Ct.)]	674
<i>Salen Rederierna A.G.</i> :— <i>Antaios Compania Naviera S.A. v.</i> ...	[C.A.+ Q.B. (Com. Ct.)]	473
<i>Scandinavian Trading Tanker Co. A.B. v. Flota Petrolera Ecuatoriana (The Scaptrade)</i> .....	[H.L.]	253

## CONTENTS—continued

	COURT	PAGE
<i>Scaptrade</i> , The .....	[H.L.]	253
Seacalf Shipping Corporation:—Central Insurance Co. Ltd. v. ....	[C.A.]	25
Seawind Maritime Inc. v. Romanian Bank for Foreign Trade ...	[Q.B. (Com. Ct.)]	204
Sedgwick Ltd. and Irish National Insurance Co. Ltd.:—Oman Insurance Co. Ltd. v. ....	[Q.B. (Com. Ct.)]	453
<i>Sennar</i> , (No. 2) The .....	[Q.B. (Adm. Ct.)]	399
<i>Sevonja Team</i> , The .....	[Q.B. (Com. Ct.)]	640
Shaw, Laughton and Lewis:—Merkur Island Shipping Corporation v. ....	[H.L.]	1
<i>Sheba and Shamsan</i> , The .....	[Q.B. (Com. Ct.)]	500
Shell Internationale Petroleum Maatschappij B.V. and Whesoe Ltd.:—Qatar Petroleum Producing Authority and Qatar General Petroleum Corporation v. ....	[C.A.]	35
Showa Oil Tanker Co. Ltd. of Japan v. Maravan S.A. of Caracas (The <i>Larissa</i> ) .....	[Q.B. (Com. Ct.)]	325
Skips A/S Nordheim and Others v. Syrian Petroleum Co. Ltd. and Petrofina S.A. (The <i>Varennia</i> ) .....	[C.A.]	592
<i>Sonia S</i> , The .....	[Q.B. (Adm. Ct.)]	63
Sosimage S.p.A.:—Italgrani di Francesco Ambrosio v. ....	[Q.B. (Com. Ct.)]	109
Sotheby Parke Bernet & Co., Lance Entwistle and George Ortiz:—Attorney General of New Zealand v. ....	[H.L.]	265
Spratt & Son (N.W.) Ltd.—: Markappa Inc. v. ....	[Q.B. (Com. Ct.)]	406
State Trading Corporation of India Ltd. v. Compagnie Francaise D'Importation et de Distribution .....	[Q.B. (Com. Ct.)]	679
Stockport Metropolitan Borough Council v. O'Reilly .....	[Q.B. (Com. Ct.)]	70
Sudan Oil Seeds Co. Ltd. and George Bridge (No. 2):—Tracomina S.A. v. ....	[C.A.]	624
Sudan Oil Seeds Co. Ltd.:—Tracomina S.A. v. ....	[C.A.]	384
Sun International Ltd. and Sun Oil Trading Co.:—Bulk Oil (Zug) A.G. v. ....	[C.A.]	587
Sun Life Assurance Co. of Canada (U.K.) Ltd.:—British Bank of the Middle East v. ....	[H.L.]	9
Syrian Petroleum Co. Ltd. and Petrofina S.A.:—Skips A/S Nordheim and Others v. ....	[C.A.]	592
Tate & Lyle Industries Ltd. v. Greater London Council and Others .....	[(H.L.) + (C.A.)]	117
Telfair Shipping Corporation v. Inersea Carriers S.A. (The <i>Caroline P.</i> ) .....	[Q.B. (Com. Ct.)]	351
<i>TFL Prosperity</i> , The .....	[C.A.]	18
<i>Theotokos</i> , <i>Minoan Bull</i> and <i>Tirgu Frumos</i> , The .....	[Q.B. (Com. Ct.)]	204
<i>Tiiskeri</i> , <i>Nestegas</i> and <i>Enskeri</i> , The .....	[Q.B. (Com. Ct.)]	658
<i>Tirgu Frumos</i> , <i>Theotokos</i> and <i>Minoan Bull</i> , The .....	[Q.B. (Com. Ct.)]	204
Toepfer (Alfred C.):—Cobec Brazilian Trading and Warehousing Corporation v. ....	[C.A.]	386
<i>Torenia</i> , The .....	[Q.B. (Com. Ct.)]	210
Tor Line A.B. v. Alltrans Group of Canada Ltd. (The <i>TFL Prosperity</i> ) .....	[C.A.]	18
Tracomina S.A. v. Sudan Oil Seeds Co. Ltd. ....	[C.A.]	384
Tracomina S.A. v. Sudan Oil Seeds Co. Ltd. and George Bridge (No. 2) .....	[C.A.]	624
Tradax Export S.A. v. European Grain & Shipping Ltd. ....	[Q.B. (Com. Ct.)]	100
Tradax Export S.A. v. Italgrani di Francesco Ambrosio .....	[Q.B. (Com. Ct.)]	109
Tradax Export S.A.:—Rocco Giuseppe & Figli .....	[Q.B. (Com. Ct.)]	434
Trans Continental Commodity Merchants Ltd. and Jashbai Nagjibhai Patel:—Bank of India v. ....	[C.A.]	298
Trave Schiffahrtsgesellschaft m.b.H. und Co. K.G.:—Ninemina Maritime Corporation v. ....	[C.A.+ Q.B. (Com. Ct.)]	600
<i>T.S. Havprins</i> , The .....	[Q.B. (Com. Ct.)]	356

CONTENTS—*continued*

	COURT	PAGE
Universal Oil Products Co., Procon Inc. and Procon (Great Britain) Ltd.:—Export Credits Guarantee Department v.	[H.L.]	152
Vale Do Rio Doce Navegação S.A.:—Allied Marine Transport Ltd. v. ....	[Q.B. (Com. Ct.)]	411
Varenna, The .....	[C.A.]	592
Vasso, The .....	[Q.B. (Com. Ct.)]	346
Veecheema B.V.:—Pancommerce S.A. v. ....	[C.A.]	304
Vimeira, The .....	[Q.B. (Com. Ct.)]	424
Whessoe Ltd. and Shell Internationale Petroleum Maatschappij B.V.:—Qatar Petroleum Producing Authority and Qatar General Petroleum Corporation v. ....	[C.A.]	35
Williams & Glyn's Bank Ltd. v. Astro Dinamico Compania Naviera S.A. and Georgian Shipping Enterprises S.A. ....	[C.A.]	485
X, Y and Z v. B .....	[Q.B. (Com. Ct.)]	535
Y, Z and X v. B .....	[Q.B. (Com. Ct.)]	535
Z, X and Y v. B .....	[Q.B. (Com. Ct.)]	535



# LLOYD'S LAW REPORTS

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The "Hoegh Apapa"

PART I

## HOUSE OF LORDS

Mar. 14, 15 and 16, 1983

MERKUR ISLAND SHIPPING  
CORPORATION  
v.  
LAUGHTON SHAW AND LEWIS  
(THE "HOEGH APAPA")

Before Lord DIPLOCK,  
Lord EDMUND-DAVIES,  
Lord KEITH OF KINKEL,  
Lord BRANDON OF OAKBROOK and  
Lord BRIGHTMAN

**Pratice — Trade union dispute — Vessel prevented from sailing — Injunction granted to lift blacking — Owners claimed damages for deliberate interference with time charter and with owners' trade and business — Whether trade union entitled to immunity — Whether writ disclosed cause of action at common law — Trade Union and Labour Relations Act, 1974, s. 13 — Employment Act, 1980, s. 17.**

The plaintiff owners let their vessel *Hoegh Apapa* to the charterers under a time charter dated Feb. 12, 1982. The charter provided inter alia:

51. In the event of loss of time due to boycott of the vessel in any port or place by shore labour or others . . . or arising from the terms and conditions on which the members of the crew are employed . . . payment of hire shall cease for time thereby lost.

60. Should the vessel be prevented from work for the reasons as outlined in Clause . . . 51 . . . for more than ten days, Charterers shall have the option of cancelling this contract.

*Hoegh Apapa* was a Liberian registered vessel and the majority of her crew were Filipinos recruited in Manila. On July 6, 1982, the vessel was in Tilbury when a crew member complained

of low wages to a representative of the defendants (I.T.F.). The vessel however escaped from Tilbury during the negotiations for an agreement.

On July 14 I.T.F. learned that the vessel was due in Liverpool on July 15 for loading. I.T.F. asked for help to black the vessel. On July 16 the vessel was ready to sail but the tug-men in breach of their contract of employment refused to take her, save to a lay berth. The lock-keepers also refused to work the gates to allow the vessel out. I.T.F. were informed of the terms of the charter on July 16.

Negotiations to settle the dispute failed and the owners applied for an injunction to lift the blacking.

By their writ the owners claimed damages for (1) interference with contract and (2) interference with trade or business. They argued that they had an unanswerable claim for damages at common law and although I.T.F. would have been protected by s. 13 of the Trade Union and Labour Relations Act, 1974 (the 1974 Act) such immunity had been removed by s. 17 of the Employment Act, 1980 (the 1980 Act).

I.T.F. accepted that the claim for interference with trade or business disclosed a good cause of action but contended that they were protected by s. 13 of the 1974 Act.

— *Held*, by PARKER, J., that the owners were entitled to the injunctions applied for.

On appeal by I.T.F.:

— *Held*, by C.A. (Sir JOHN DONALDSON, M.R., O'CONNOR and DILLON, L.JJ.), that (1) the owners had made out a cause of action at common law in that I.T.F., with knowledge of the charter, intended to prevent the due performance of the contract and in doing so they had induced the tug-men to commit a breach of contract of employment and that a necessary consequence of calling out the tug-men was that the charterers were prevented from performing their contract thereby causing damage to the owners;

(2) the act done in calling out the tug-men was fairly and squarely within and so given immunity by s. 13 (a) of the 1974 Act so far as interference with contract was concerned; however that immunity was removed by s. 17 of the 1980 Act in

that there was no contract subsisting between the owners and the tug-owners and the purpose was not directly to prevent supply, i.e., the means used was to prevent supply of service by the tug-owners to the charterers under the contract between them;

(3) the intention of Parliament was to remove immunity from liability caused by secondary action as defined in s. 17 to anyone suffering damage who apart from the 1974 Act could maintain an action for it;

(4) as to the claim for damages in respect of interference with trade or business it was not possible on the material at present available to decide the limits of the immunity granted by s. 13 of the 1974 Act;

(5) in the circumstances the learned Judge was entitled to make the orders that he did on the basis of unlawful interference with contract and the appeal would be dismissed.

On appeal by I.T.F.:

—*Held*, by H.L. (Lord DIPLOCK, Lord EDMUND-DAVIES, Lord KEITH of KINKEL, Lord BRANDON of OAKBROOK and Lord BRIGHTMAN), that (1) all the four elements required for the tort of actionable interference with contractual rights were fulfilled in this case (*see* p. 6, col. 2; p. 7, col. 1); and the owners had made out a strong *prima facie* case that I.T.F. had committed the common law tort of actionable interference with contractual rights (*see* p. 7, col. 1).

—*D. C. Thomson & Co. Ltd. v. Deakin*, [1952] Ch. 646, applied.

(2) in the instant case the contract concerned was the charter; the employers who were parties to the trade dispute were the owners and the charter was a contract for the supply of services to which the owners and the charterers alone were parties; the owners were not parties to any subsisting contract with the tug-owners and the tug-owners were the employers under the contract of employment to which the secondary action related so that the requirements of sub-s. (3) (a) of the 1980 Act were not satisfied; there was therefore secondary action within the meaning of s. 17 (2) which did not satisfy the requirements of sub-s. (3) with the result that the immunity granted by s. 13 of the 1974 Act was withdrawn by s. 17 of the 1980 Act (*see* p. 8, cols. 1 and 2); and the appeal would be dismissed (*see* p. 8, col. 2; p. 9, col. 1).

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

*Marina Shipping Ltd. v. Laughton (The Antama)*, (C.A.) [1982] 2 Lloyd's Rep. 112; [1982] Q.B. 1127;

*N.W.L. Ltd. v. Wood*, [1980] 1 Lloyd's Rep. 1; [1979] 1 W.L.R. 1294;

*Thomson (D.C.) & Co. Ltd. v. Deakin*, [1952] Ch. 646;

*Torquay Hotel Co. Ltd. v. Cousins*, (C.A.) [1969] 2 Ch. 106.

This was an appeal by the defendants I.T.F. (of which Mr. Brian Laughton, Mr. H. Shaw and Mr. H. Lewis were the official representatives) from the decision of the Court of Appeal ([1983] 1 Lloyd's Rep. 154) dismissing the appeal of the I.T.F. from the decision of Mr. Justice Parker given in favour of the plaintiffs, Merkur Island Shipping Corporation and holding in effect that I.T.F. were liable to the plaintiffs for unlawful interference with the plaintiffs' contract.

Mr. Roger Buckley, Q.C., and Mr. Timothy Charleton (instructed by Messrs. Holman, Fenwick & Willan) for the plaintiffs; Mr. Cyril Newman, Q.C., Mr. Nicholas Merriman and Mr. Charles Macdonald (instructed by Messrs. Clifford-Turner) for the defendants, I.T.F.

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

Judgment was reserved.

Thursday, Apr. 21, 1983

## JUDGMENT

**Lord DIPLOCK:** My Lords, this appeal, in which I shall refer to the individual appellants collectively as "I.T.F.", is concerned with yet another skirmish in the war that has for some years past been waged by the International Transport Workers' Federation ("I.T.F.") against the use of vessels under flags of convenience in maritime trade to and from ports in Western Europe. The objects of this campaign, its consequences on the employment of Asian seamen and the way in which it has hitherto been conducted are explained in *N.W.L. Ltd. v. Woods*, [1980] 1 Lloyd's Rep. 1; [1979] 1 W.L.R. 1294 at pp. 4 and 1297. The present appeal, however, differs from the previous I.T.F. cases because it is the first to have come before this House, and only the second to have come before the Court of Appeal, in which the blacking of a flag-of-convenience vessel by preventing it from leaving a port in the United Kingdom took place after the coming into force of s. 17 of the Employment Act, 1980 ("the 1980 Act"), which withdraws from certain kinds of secondary action taken in furtherance of a trade dispute, the wide immunity from liability in tort conferred by s. 13 of the Trade Union and Labour Relations Act, 1974 as amended in 1975 and 1976 ("the 1974 Act").

Such facts as it is necessary to recount in order to dispose of this appeal can be stated briefly. The respondents ("the shipowners") own *Hoegh Apapa* ("the ship"), a Liberian registered ship, of which the majority of the crew were Filipinos. On July 15, 1982, she arrived at a dock in Liverpool for loading. I.T.F., (of which the individual appellants are officials) having previously learnt that the shipowners were paying less than the rate of wages approved by I.T.F., persuaded the tug-men employed by a company known as Rea Towing ("the tug-owners") to refuse, in breach of their contract of employment with the tug-owners, to move the ship out of the dock so as to enable her to sail.

The ship was let by the shipowners to Leif Hoegh & Co. ("the charterers") under a time charter ("the charter") in the New York Produce Exchange form with certain additional clauses, two of which it will be necessary to refer. The charterers in turn had sub-chartered the ship to Ned Lloyd under a six-months' time charter ("the sub-charter") containing similar clauses. Both charter and sub-charter provided that the charterers thereunder should:

... provide and pay for all ... port charges, normal pilotages, agencies, commissions, consular charges ... and all other usual expenses. ... but when the vessel puts into a port for causes for which the vessel is responsible, then all such charges incurred shall be paid by the owners.

Pursuant to this clause in the sub-charter, the sub-charterers, who have a running contract with the tug-owners for the provision of tugs to all their vessels using the port of Liverpool, made through their agent a specific contract with the tug-owners for the provision of tugs to take the ship into and out of the dock at which the ship was to be loaded. As a result of the blacking of the vessel, however, on completion of the loading on July 16 the tug-men employed by the tug-owners, in breach of their contracts of employment, refused to move the ship except to a lay-berth.

While the ship was thus immobilized, on July 21 the shipowners applied ex parte to Mr. Justice Parker, sitting in the Commercial Court, for an order requiring I.T.F. to lift the blacking of the ship. The hearing, at which I.T.F. were represented and adduced affidavit evidence, took place on July 23 when Mr. Justice Parker granted the injunction.

On the very same day as the injunction was granted an extraordinarily high tide in the Mersey made it necessary for the lock-keepers to leave the dock gates open and the ship, dispensing with the use of tugs, seized the opportunity to escape from the dock under her

own power and to proceed to sea. The result was that the injunction came too late to have practical consequences unless the ship should return to Liverpool on another voyage under the sub-charter — an event which did not in fact occur. But the question whether Mr. Justice Parker misdirected himself in law in holding that the shipowners had a cause of action against I.T.F. has not been thereby rendered wholly academic. The shipowners' writ includes claims in tort for damages under two alternative heads:

(1) Damages for deliberate interference with and/or threat to the performance of a time charter dated 12th February 1982 between the plaintiffs and Leif Hoegh and Co. Aktieselskab, such interference and/or threat being brought about by unlawful means, namely wrongfully procuring and/or inducing and/or threatening to procure or induce lock keepers and/or tugmen and/or pilots and/or boatmen and/or linesmen and/or others concerned with the free passage and operation of vessels at Liverpool to refuse to assist the free passage or working of the "Hoegh Apapa" at Liverpool.

(2) Damages for deliberate interference with and/or threat to the trade and business of the plaintiffs, such interference and/or threat being brought about by unlawful means namely wrongfully procuring and/or inducing and/or threatening to procure or induce lock keepers and/or tugmen and/or boatmen and/or linesmen and/or others concerned with the free passage and operation of vessels at Liverpool to refuse to assist the free passage or working of the "Hoegh Apapa" at Liverpool.

It was under the first head that Mr. Justice Parker held that on the evidence before him the shipowners had shown a cause of action at common law in respect of which it was unlikely the I.T.F. would succeed in establishing an immunity from liability under the 1974 Act as modified by the 1980 Act.

Before the 1980 Act came into force the question whether "blacking" was lawful in any particular case involved a two-stage approach. Stage 1 was to determine whether the plaintiff had established that what was done in the course of the "blacking" would, if the 1974 Act had not been passed, have given him a cause of action in tort. If so, stage 2 was to determine whether that cause of action was removed as against individual defendants by s. 13 of the 1974 Act. To that two-stage process the 1980 Act added one further stage, stage 3. This was to determine whether that cause of action which had been removed by the 1974 Act was restored by s. 17 of the 1980 Act. In adopting this three-stage



approach I gratefully follow the lead of my noble and learned friend, Lord Brightman (then Lord Justice Brightman) in *Marina Shipping Ltd. v. Laughton (The Antama)*, [1982] 2 Lloyd's Rep. 112; [1982] Q.B. 1127.

In the instant case there were two separate questions of law upon which it was contended by I.T.F. that Mr. Justice Parker had erred. The first, which I shall call the stage 1 point, was that Mr. Justice Parker was wrong in holding that there was any such tort at common law as was alleged in head (1) of the writ. The second, which I shall call the stage 3 point, was that the Judge had misconstrued s. 17 of the 1980 Act—a question of construction upon which he had regarded himself as bound by the judgments in *The Antama*.

Desirous of clarifying the law about blacking as affected by s. 17 of the 1980 Act, I.T.F. appealed to the Court of Appeal from Mr. Justice Parker's order. In their notice of appeal in addition to the stage 1 point and the stage 3 point, they raised several other points with which your Lordships need not be concerned. The Court of Appeal (Sir John Donaldson, M.R., Lords Justices O'Connor and Dillon) acceded to I.T.F.'s request for clarification of the law; since, as Sir John Donaldson, M.R., put it—

... lack of clarity posed problems for a judge who is asked, at short notice and as a matter of urgency, to grant an injunction [[1983] 1 Lloyd's Rep. 154; [1983] 2 W.L.R. 45 at pp. 164 and 61].

The Court of Appeal were unanimous in upholding the judgment appealed from on the stage 1 point. On the stage 3 point, the Court of Appeal too regarded themselves as bound by the decision in *The Antama*, although both Sir John Donaldson, M.R. and Lord Justice O'Connor did state briefly in their own words reasons for agreeing with the interpretation of s. 17 of the 1980 Act that had commended itself to the Court of Appeal in *The Antama*.

My Lords, although the stage 1 point is one of common law, the importance of the shipowners' being able to establish a cause of action at common law under head (1) of the writ rather than, or as well as, a cause of action at common law under head (2), is a consequence of the language used in s. 13 of the 1974 Act and s. 17 of the 1980 Act, since it is rightly not contested by the shipowners that if their only cause of action at common law lay under head (2) of the writ, it would be removed at stage 2 by s. 13 (2) of the 1974 Act and would not be restored at stage 3 by s. 17 of the 1980 Act. It is therefore convenient to start by setting out these sections

in extenso omitting only, as irrelevant, sub-ss. (4) and (5) and part of sub-s. (7) of s. 17 of the 1980 Act:

#### 1974 Act

13. Acts in contemplation or furtherance of trade disputes—

(1) An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable in tort on the ground only—

(a) that it induces another person to break a contract or interferes or induces any other person to interfere with its performance; or

(b) that it consists in his threatening that a contract (whether one to which he is a party or not) will be broken or its performance interfered with, or that he will induce another person to break a contract or to interfere with its performance.

(2) For the avoidance of doubt it is hereby declared that an act done by a person in contemplation or furtherance of a trade dispute is not actionable in tort on the ground that it is an interference with the trade, business of employment of another person, or with the right of another person to dispose of his capital or his labour as he wills.

(3) For the avoidance of doubt it is hereby declared that—

(a) an act which by reason of subsection (1) or (2) above is itself not actionable;

(b) a breach of contract in contemplation or furtherance of a trade dispute; shall not be regarded as the doing of an unlawful act or as the use of unlawful means for the purposes of establishing liability in tort.

(4) An agreement or combination by two or more persons to do or procure the doing of any act in contemplation or furtherance of a trade dispute shall not be actionable in tort if the act is one which, if done without any such agreement or combination, would not be actionable in tort.

#### 1980 Act

17.—(1) Nothing in section 13 of the 1974 Act shall prevent an act from being actionable in tort on a ground specified in subsection (1)(a) or (b) of that section in any case where—

(a) the contract concerned is not a contract of employment, and

(b) one of the facts relied upon for the purpose of establishing liability is that there has been secondary action which is not action satisfying the requirements of subsection (3), (4) or (5) below.

(2) For the purposes of this section there is secondary action in relation to a trade dispute when, and only when, a person—

(a) induces another to break a contract of employment or interferes or induces another to interfere with its performance, or

(b) threatens that a contract of employment under which he or another is employed will be broken or its performance interfered with, or that he will induce another to break a contract of employment or to interfere with its performance,

if the employer under the contract of employment is not a party to the trade dispute.

(3) Secondary action satisfies the requirements of this subsection if—

(a) the purpose or principal purpose of the secondary action was directly to prevent or disrupt the supply during the dispute of goods or services between an employer who is party to the dispute and the employer under the contract of employment to which the secondary action relates; and

(b) the secondary action (together with any corresponding action relating to other contracts of employment with the same employer) was likely to achieve that purpose . . .

(6) In subsections (3)(a) and (4)(a) above—

(a) references to the supply of goods or services between two persons are references to the supply of goods or services by one to the other in pursuance of a contract between them subsisting at the time of the secondary action, and

(b) references to directly preventing or disrupting the supply are references to preventing or disrupting it otherwise than by means of preventing or disrupting the supply of goods or services by or to any other person.

(7) Expressions used in this section and in the 1974 Act have the same meanings in this section as in that Act . . .

(8) Subsection (3) of section 13 of the 1974 Act shall cease to have effect.

### *The stage 1 point*

The common law tort relied upon by the shipowners under head (1) of the writ is the tort of interfering by unlawful means with the performance of a contract. The contract of which the performance was interfered with was the charter, the form the interference took was by immobilizing the ship in Liverpool to prevent the captain from performing the contractual obligation of the shipowners under cl. 8 of the charter to "prosecute his voyages with the utmost dispatch". The unlawful means by which the interference was effected was by procuring the tug-men and the lock-men to break their contracts of employment by refusing to carry out the operations on the part of the tug-owners and the port authorities that were necessary to enable the ship to leave the dock.

The reason why the shipowners relied upon interference with the performance of the charter rather than procuring a breach of it was the presence in the charter of cl. 51 and 60 which were in the following terms:

51. Blockade/boycott. In the event of loss of time due to boycott of the vessel in any port or place by shore labour or others, or arising from Government restrictions by reason of the vessel's flag, or arising from the terms and conditions on which the members of the crew are employed, or by reason of the trading of this vessel, payment of hire shall cease for time thereby lost.

60. Cancellation. Should the vessel be prevented from work for the reasons as outlined in Clauses 49/50/51 and 52 for more than ten days, Charterers shall have the option of cancelling this contract.

My Lords, your Lordships have had the dubious benefit during the course of the argument in this appeal of having been referred once more to many of those cases, spanning more than a century, that were the subject of analysis in the judgment of Lord Justice Jenkins in *D. C. Thomson & Co. Ltd. v. Deakin*, [1952] Ch. 646 and led to his statement of the law as to what are the essential elements in the tort of actionable inference with contractual rights by "blacking" that is cited by Sir John Donaldson, M.R., and, at rather greater length, by Lord Justice O'Connor in their judgments in the instant case. That statement has, for 30 years now, been regarded as authoritative, and for my part, I do not think that any benefit is gained by raking over once again the previous decisions. The elements of the tort as stated by Lord Justice Jenkins were:

... first, that the person charged with actionable interference knew of the existence