LLOYD'S LAW REPORTS

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

Assistant Editor :
Wendy Evans, B.A.
of Lincoln's Inn, Barrister

1979

Volume 2

PUBLISHED BY LLOYD'S OF LONDON PRESS LTD. (LEGAL PUBLISHING & CONFERENCES DEPARTMENT), 16-17 BRIDE LANE, LONDON, EC4Y 8EB. PRINTED BY THE CARLTON BERRY CO. LTD. 68-80 HANBURY STREET, LONDON, E1 5JS.

CASES JUDICIALLY CONSIDERED

		PAGE
Adie & Sons v. The Insurances Corporation Ltd.—*Applied.*	(1898) 14 T.L.R. 544	334
Adler Cosmetica v. Minnahurst Ltd.—*Applied.*	Unreported	117
Agios Stylianos Compania Naviera S.A. v. Maritime Associates International Ltd.—*Considered.*	[1975] 1 Lloyd's Rep. 426	408
Alan, (W.J.) & Co. Ltd. v. El Nasr Export & Import Co.—*Applied.*	[1972] 1 Lloyd's Rep. 313	122
Andrea Ursula, The—*Not followed.*	[1971] 1 Lloyd's Rep. 145	364
Associated Bulk Carriers Ltd. v. Koch Shipping, Inc.—*Considered.*	[1978] 1 Lloyd's Rep. 24	117
Atkins v. Wardle—*Considered.*	(1889) 58 L.J.Q.B. 377	385
Austin v. Zurich General Accident & Liability Co. Ltd.—*Considered and applied.*	(1944) 77 Ll.L. Rep. 409	235
Baumwoll Manufactur Von Carl Schiebler v. Furness—*Considered.*	[1893] A.C. 8	364
Bradburn v. Great Western Railway Co.—*Applied.*	(1874) L.R. 10 Ex. 1	45
Bremer Handelsgesellschaft m.b.H. v. Mackprang—*Considered.*	[1979] 1 Lloyd's Rep. 221	372
Bremer Handelsgesellschaft m.b.H. v. J. H. Rayner & Co. Ltd.—*Applied.*	[1979] 2 Lloyd's Rep. 216	477
Bremer Handelsgesellschaft m.b.H. v. Vanden Avenne-Izegem P.V.B.A.—*Applied.*	[1978] 2 Lloyd's Rep. 109	372, 460, 477
Bremer Handelsgesellschaft m.b.H. v. Vanden Avenne-Izegem P.V.B.A.—*Considered.*	[1978] 2 Lloyd's Rep. 109	57
Bridger v. Savage—*Considered.*	(1885) 15 Q.B. 363	412
Brooke v. Mitchell—*Applied.*	(1840) 9 L.J. (N.S.) Ex. 269	289
Bunge S.A. v. Kruse—*Not followed.*	[1979] 1 Lloyd's Rep. 279	372
Bunge S.A. v. Kruse—*Distinguished.*	[1979] 1 Lloyd's Rep. 279	122
Camilla M, The—*Distinguished.*	[1979] 1 Lloyd's Rep. 26	317
Castellain v. Preston—*Applied.*	(1883) 11 Q.B.D. 380	91
Clayton's Case—*Applied.*	(1816) 1 Mer. 572	142
Deeley v. Lloyds Bank Ltd.—*Applied.*	[1912] A.C. 756	142
Dermatine Co. Ltd. (The) v. Ashworth and Others—*Considered.*	(1905) 21 T.L.R. 510	385
Dineen v. Walpole—*Applied.*	[1969] 1 Lloyd's Rep. 261	298
Durham Fancy Goods Ltd. v. Michael Jackson (Fancy Goods) Ltd.—*Considered.*	[1968] 2 Q.B. 839	385
Eleftheria, The—*Considered.*	[1969] 1 Lloyd's Rep. 237	286
Ets Soules & Cie v. International Trade Developments Co. Ltd.—*Applied.*	[1979] 2 Lloyd's Rep.	372

CASES JUDICIALLY CONSIDERED—*continued*

		PAGE
Federal Commerce & Navigation Co. Ltd. v. Molena Alpha Inc.—*Considered.*	[1978] 2 Lloyd's Rep. 132	248
Fergus (Wm.) Harris & Son Ltd. v. China Mutual Steam Navigation Co. Ltd.—*Applied.*	[1959] 2 Lloyd's Rep. 500	79
Finagrain S.A. v. Kruse—*Considered.*	[1976] 2 Lloyd's Rep. 508	372
Forman v. Wright—*Applied.*	11 C.B. 481	282
General Accident Insurance Corporation v. Cronk—*Applied.*	(1901) 17 T.L.R. 233	334
General Motors Co. v. Moore-McCormack Lines, Inc.—*Distinguished.*	(1971) 451 F.2d. 25	173
Hadley v. Baxendale—*Applied.*	(1854) 9 Ex. 341	98
Hallets Estate, In re—*Applied.*	13 Ch.D. 696	168
Hansa Nord, The—*Applied.*	[1975] 2 Lloyd's Rep. 445	477
Hedley Byrne Co. Ltd. v. Heller & Partners—*Applied.*	[1963] 1 Lloyd's Rep. 485	391
Hendon v. Adelman—*Considered.*	(1973) 117 S.J. 631	385
Hong Kong Fir Shipping Co. Ltd. v. Kawasaki Kisen Kaisha—*Applied.*	[1961] 1 Lloyd's Rep. 478	477
I Congreso del Partido, The—*Applied.*	[1977] 1 Lloyd's Rep. 536	364
Isaac & Sons v. Salbstein—*Applied.*	[1916] 2 K.B. 139	385
Isbrandtsen, Petition of—*Distinguished.*	(1953) 201 F.2d. 281	173
Jackson, Sir John v. Owners of S.S. *Blanche*—*Applied.*	[1908] A.C. 126	364
John Deere & Co. v. Mississippi Shipping Co.—*Distinguished.*	(1959) 170 F. Supp. 479	173
Kitchin, Re—*Applied.*	(1881) 17 Ch.D. 668	412
Kleinwort Sons & Co. v. Ungarische Baumwolle Industrie Aktiengesellschaft and Another—*Applied.*	[1939] 2 K.B. 678	98
Lemington, The—*Applied.*	(1874) 2 Asp. Mar. Law Cas. 475	364
Lysland, The—*Applied.*	[1973] 1 Lloyd's Rep. 296	72
Lysland, The—*Distinguished.*	[1973] 1 Lloyd's Rep. 296	267
Mawson Shipping Co. Ltd. v. Beyer—*Applied.*	[1914] 1 K.B. 304	289
Miliangos v. George Frank (Textiles) Ltd.—*Applied.*	[1976] 1 Lloyd's Rep. 201	231
Montreal Trust Co. & Stampleman v. Canadian Pacific Airlines Ltd.—*Distinguished.*	[1977] 2 Lloyd's Rep. 80	260
Nova (Jersey) Knit Ltd. v. Kammgarn Spinnerei G.m.b.H.—*Considered.*	[1977] 1 Lloyd's Rep. 463	282
Pan American World Airways, Inc. v. California Stevedore & Ballast Co.—*Applied.*	(1977) 559 F.2d. 1173	173
Panchaud Freres S.A. v. Etablissements General Grain Co.—*Considered.*	[1970] 1 Lloyd's Rep. 53	57
Parry v. Cleaver—*Applied.*	[1969] 1 Lloyd's Rep. 183	45
Penrose v. Martyr—*Considered.*	(1858) 120 E.R. 595	385

CASES JUDICIALLY CONSIDERED—*continued*

		PAGE
Rasu Maritima S.A. v. Pertamina ____*Considered.*	[1977] 2 Lloyd's Rep. 397	117
Reardon Smith Line Ltd. v. Hansen Tangen____*Applied.*	[1976] 2 Lloyd's Rep. 621	477
Rena K, The____*Considered.*	[1978] 1 Lloyd's Rep. 545	117
Rickards v. Oppenheim____*Applied.*	[1950] 1 K.B. 616	98
Ripon City, The ____*Considered.*	[1897] P. 226	364
Services Europe Atlantique Sud (SEAS) v. Stockholms Rederiaktiebolag SVEA and The *Despina R*____*Applied.*	[1979] 1 Lloyd's Rep. 1	231
Silver v. Ocean Steam Ship Co.____*Applied.*	[1930] 1 K.B. 416	79
Siskina, The____*Considered.*	[1978] 1 Lloyd's Rep. 1	117
Societe Co-operative Suisse des Cereales et Matieres Sourrageres v. La Plata Cereal Co. S.A.____*Applied.*	(1947) 80 Ll.L. Rep. 530	216
Stacey & Co. v. T. H. Wallis Ltd.____*Applied.*	(1912) 28 T.L.R. 209	385
Tallina Laevauhisis and Others v. Estonian State Steamship Line and Another____ *Considered.*	(1947) 80 Ll.L. Rep. 99	498
Tervaete, The____*Considered.*	(1922) 12 Ll.L. Rep. 252	364
Thomas Marshall (Exports) Ltd. v. Guinle____*Considered.*	[1978] 3 All E.R., 193	240
Tradax Export S.A. v. Andre & Cie. S.A.____*Applied.*	[1976] 1 Lloyd's Rep. 416	460
Tradax Export S.A. v. Andre & Cie ____*Considered.*	[1976] 1 Lloyd's Rep. 416	57
Tramountana Armadora S.A. v. Atlantic Shipping Co. S.A.____*Considered.*	[1978] 1 Lloyd's Rep. 310	298
Trendtex Trading Corporation v. Central Bank of Nigeria____*Applied.*	[1977] 1 Lloyd's Rep. 581	277
Vandyke v. Fender____*Distinguished.*	[1970] 1 Lloyd's Rep. 320	204
Vitkovice Horni A. Hutni Tezirstvo v. Korner____*Applied.*	[1951] A.C. 869	240
Weddell v. Road Transport & General Insurance Co. Ltd.____*Considered and applied.*	(1931) 41 Ll.L. Rep. 69	235
Weintex Trading Co. v. Flota Mercante Gran Centro Americana S.A.____*Applied.*	(1977) 75 Civ. 1458	173
Wilson, Smithett & Cope Ltd. v. Terruzzi____*Considered.*	[1976] 1 Lloyd's Rep. 509	498

STATUTES CONSIDERED

PAGE

UNITED KINGDOM—

ADMINISTRATION OF JUSTICE ACT, 1956
s. 1 (1) (d) 364
s. 3 (3) 364
s. 3 (4) 364

ARBITRATION ACT, 1950
s. 8 (1) 439
s. 12 (6) (f) 117
s. 21 (1) 72, 248, 267
s. 26 439
s. 27 ..... 122, 273, 280
s. 28 267

ARBITRATION ACT, 1975
s.1 117

BILLS OF EXCHANGE ACT, 1882
s. 26 (1) 75
s. 26 (2) 75

COMPANIES ACT, 1947
s. 58 (1) 385

COMPANIES ACT, 1948
s. 95 142
s. 108 385

JUDICATURE ACT, 1925
s. 45 117

MARINE ISURANCE ACT, 1906
s. 55 (2) (c) 450

MERCHANT SHIPPING ACT, 1894
s.504 42

MISREPRESENTATION ACT, 1967
s. 2 (1) 427

REGISTRATION OF BUSINESS NAMES ACT, 1916 385

SALE OF GOODS ACT, 1893
s.34 28
s.35 28
s.56 28

STATE IMMUNITY ACT, 1978 277

TRADE UNION AND LABOUR RELATIONS ACT, 1974
s.13 ..... 317, 325, 331
s.17 ..... 317, 325, 331
s.29 ..... 317, 325, 331

UNITED STATES—

CARRIAGE OF GOODS BY SEA ACT (COGSA 46 U.S.C. s.1304(5))
s. 4 (5) 173

FOREIGN SOVEREIGN IMMUNITIES ACT, 1976 277

CONTENTS

NOTE:—These Reports should be cited as "[1979] 2 Lloyd's Rep."

Abbey Life Assurance Co. Ltd. and Another:—Rust v.	[C.A.]	334
African Continental Bank Ltd.:—Ozalid Group (Export) Ltd. v.	[Q.B. (Com. Ct.)]	231
Afromar Inc. v. Greek Atlantic Cod Fishing Co. (The *Penelope II*)	[Q.B. (Adm. Ct.)]	42
Aggelikai Ptera Compania Maritima S.A., Third Chandris Shipping Corporation and Western Sealane Corporation v. Unimarine S.A.	[C.A.]	184
Agrabele, The	[Q.B. (Com. Ct.)]	117
Andre & Cie S.A. v. Ets. Michel Blanc & Fils	[C.A.]	427
Andre & Cie S.A.:—Warinco A.G. v.	[Q.B. (Com. Ct.)]	298
Angel Bell, The	[Q.B. (Com. Ct.)]	491
Angelic Wings, The	[C.A.]	184
Antco Shipping Ltd. v. Seabridge Shipping Ltd. (The *Furness Bridge* (No. 2))	[C.A.]	267
Arcepey Shipping Co. S.A. and Gillespie Bros. & Co. Ltd.:—Iraqi Ministry of Defence and Others v.	[Q.B. (Com. Ct.)]	491
Archipelagos, The	[Q.B. (Com. Ct.)]	289
Ashley, (J.B.) Ltd.:—Manifatture Tessile Laniera Wooltex v.	[C.A.]	28
Atlantic Underwriting Agencies Ltd. and David Gale (Underwriting) Ltd. v. Compagnia Di Assicurazione Di Milano S.p.A.	[Q.B. (Com. Ct.)	240
Avimex S.A. v. Dewulf & Cie	[Q.B. (Com. Ct.)]	57

Bank of Cyprus (London) Ltd. v. Gill	[Q.B.]	508
Barclays Bank Ltd.:—Siebe Gorman & Co. Ltd. v.	[Ch. D.]	142
Barclays Bank Ltd. v. Thomas and Others	[Q.B.]	505
Barclays Bank Ltd. and R. H. McDonald Ltd:—Siebe Gorman & Co. Ltd. v.	[Ch. D.]	143
Bluett Shipping Ltd.:—Sable Contractors Ltd. v.	[C.A.]	33
Borden (U.K.) Ltd. v. Scottish Timber Products Ltd. and McNicol Brownlie	[Ch. D.]	168
Box v. Midland Bank Ltd.	[Q.B. (Com. Ct.)]	391
Brandt's Ltd. and Piermay Shipping Co. v. Chester	[C.A.]	1
Bremer Handelsgesellschaft m.b.H. v. J. H. Rayner & Co. Ltd.	[C.A.]	216
British Airways Board v. Parish	[C.A.]	361
Bruns and Others v. Colocotronis (The *Vasso*)	[Q.B. (Com. Ct.)]	412
Bulk Transport Corporation v. Sissy Steamship Co. Ltd.; Same v. Ifled Shipping Corporation (The *Archipelagos* and *Delfi*)	[Q.B. (Com. Ct.)]	289
Bulknes, The	[Q.B. (Adm. Ct.)]	39
Bunge Corporation v. Tradax Export S.A.	[Q.B. (Com. Ct.)]	477
Bunge S.A. v. Deutsche Conti Handelsgesellschaft m.b.H.	[C.A.]	435

CONTENTS—*continued*

	COURT	PAGE
Caledonian Insurance Co.:—Harker v.	[C.A.]	193
Canadian Pacific Airlines Ltd.:—Dame Rita Hildegard Aranka Ludecke v.	[Can. Ct.]	260
Carras Shipping Co. Ltd. v. The Food Corporation of India; Same v. Same (The *Delian Leto* and *Delian Spirit*)	[C.A.]	179
Cast Shipping Ltd. v. Tradax Export S.A. (The *Hellas in Eternity*)	[C.A.]	280
Central Bank of Nigeria:—Hispano Americana Mercantil S.A. v.	[C.A.]	277
Cerealmangimi S.p.A. v. Toepfer (The *Eurometal*)	[Q.B. (Com. Ct.)]	72
Chester:—Piermay Shipping Co. and Brandt's Ltd. v.	[C.A.]	1
China National Foreign Trade Transportation Corporation v. Evlogia Shipping Co. S.A. (The *Mihalios Xilas)*	[H.L.]	303
Colocotronis:—Bruns and Others v.	[Q.B. (Com. Ct.)]	412
Compagnia Di Assicurazione Di Milano S.p.A.:—Atlantic Underwriting Agencies Ltd. and David Gale (Underwriting) Ltd. v.	[Q.B. (Com. Ct.)]	240
Congimex S.A.R.L. (Lisbon) v. Continental Grain Export Corporation (New York) and Others	[C.A.]	346
Constable Hart & Co. Ltd.:—Peter Lind & Co. Ltd. v.	[Q.B. (Com. Ct.)]	248
Continental Grain Export Corporation (New York) and Others:—Congimex S.A.R.L. (Lisbon) v.	[C.A.]	346
Continental Grain Export Corporation v. S.T.M. Grain Ltd. (Charles E. Ford Ltd.)	[Q.B. (Com. Ct.)]	460
Costain & Press (Overseas) Ltd. & Others:—Paterson v.	[C.A.]	204
Czarnikow-Rionda Co. Inc.:—Golodetz & Co. Inc. v.	[Q.B. (Com. Ct.)]	450
Dalny, The	[Q.B. (Com. Ct.)]	439
Delfi, The	[Q.B. (Com. Ct.)]	289
Delian Leto, The	[C.A.]	179
Delian Spirit, The	[C.A.]	179
Deutsche Conti Handelsgesellschaft m.b.H.:—Bunge S.A. v.	[C.A.]	435
Dewulf & Cie:—Avimex S.A. v.	[Q.B. (Com. Ct.)]	57
Edm. J. M. Mertens & Co. P.V.B.A. v. Veevoeder Import Export Vimex B.V.	[Q.B. (Com. Ct.)]	372
Ets. Michel Blanc & Fils:—Andre & Cie S.A. v.	[C.A.]	427
Ets. Soules & Cie v. International Trade Development Co. Ltd.	[Q.B.(Com.Ct.)]	122
Eurometal, The	[Q.B. (Com. Ct.)]	72
Evlogia Shipping Co. S.A.:—China National Foreign Trade Transportation Corporation v.	[H.L.]	303
Excess Insurance Co. Ltd.:—Leppard v.	[C.A.]	91
Excess Insurance Co. Ltd. and Miles, Smith, Anderson & Game Ltd. (No. 2):—Woolcott v.	[Q.B.]	210
Father Thames, The	[Q.B. (Adm. Ct.)]	364
Finagrain Compagnie Commerciale Agricole et Financiere S.A.:—Toprak Mahsulleri Ofisi v.	[C.A.]	98
Finney Lock Seeds Ltd. v. George Mitchell (Chesterhall) Ltd.	[Q.B.]	301
Food Corporation of India, The:—Carras Shipping Co. Ltd. v.	[C.A.]	179
Furness Bridge, The (No. 2)	[C.A.]	267

CONTENTS—*continued*

	COURT	PAGE
Galatia, The	[Q.B. (Com. Ct.)]	450
Gale (David) (Underwriting) Ltd. and Atlantic Underwriting Agencies Ltd. v. Compagnia Di Assicurazione Di Milano S.p.A.	[Q.B. (Com. Ct.)]	240
Gebr Van Weelde Scheepvaart Kantoor B.V. v. Homeric Marine Services Ltd. (The *Agrabele)*	[Q.B. (Com. Ct.)]	117
General Electric Co. v. M.V. *Lady Sophie* et al.	[U.S. Ct.]	173
General Produce Co. v. United Bank Ltd.	[Q.B. (Com. Ct.)]	255
Genie, The	[C.A.]	184
Gill:—Bank of Cyprus (London) Ltd. v.	[Q.B.]	507
Gillespie Bros. & Co. Ltd. v. Iraqi Ministry of Defence and Others (The *Angel Bell*)	[Q.B. (Com. Ct.)]	491
Glass Fibres and Equipment Ltd. and United City Merchants (Investments) Ltd. v. Royal Bank of Canada and Others (No. 2)	[Q.B. (Com. Ct.)]	498
Golodetz & Co. Inc. v. Czarnikow-Rionda Co. Inc. (The *Galatia*)	[Q.B. (Com. Ct.)]	450
Goodville Ltd. and Mariani:—Maxform S.p.A. v.	[Q.B. (Com. Ct.)]	385
Greek Atlantic Cod Fishing Co.:—Afromar Inc. v.	[Q.B. (Adm. Ct.)]	42
Greenwood and Keith:—Rolfe Lubbell & Co. v.	[Q.B.]	75
Harker v. Caledonian Insurance Co.	[C.A.]	193
Hayden:—National Employers Mutual Insurance Association Ltd. v.	[Q.B.]	235
Hellas in Eternity, The	[C.A.]	280
Hentz (H.):—Limako B.V. v.	[C.A.]	23
Hispano Americana Mercantil S.A. v. Central Bank of Nigeria	[C.A.]	277
Holden, Shaw and Johnson:—Porr and Others v.	[C.A.]	331
Homeric Marine Services Ltd.:—Gebr Van Weelde Scheepvaart Kantoor B.V. v.	[Q.B. (Com. Ct.)]	117
Hoyanger, The	[Can. Ct.]	79
Hoyanger, The Ship and Westfal-Larsen & Co. A/S:—Westcoast Food Brokers Ltd. and Others v.	[Can. Ct.]	79
Ifled Shipping Corporation:—Bulk Transport Corporation v.	[Q.B. (Com. Ct.)]	289
International Trade Development Co. Ltd.:—Ets. Soules & Cie v.	[Q.B. (Com. Ct.)]	122
Iraqi Ministry of Defence and Others v. Arcepey Shipping Co. S.A. and Gillespie Bros. & Co. Ltd. (The *Angel Bell*)	[Q.B. (Com. Ct.)]	491
Johnson, Holden and Shaw:—Porr and Others v.	[C.A.]	331
K.M.I. (London) Ltd.:—Marbrook Freight Ltd. v.	[C.A.]	341
Keith and Greenwood:—Rolfe Lubbell & Co. v.	[Q.B.]	75
Kollerich & Cie. S.A. v. The State Trading Corporation of India	[Q.B. (Com. Ct.)]	442
Lady Sophie, The	[U.S. Ct.]	173
Laughton and Nelson:—N.W.L. Ltd. v.	[C.A.]	317
Leppard v. Excess Insurance Co. Ltd.	[C.A.]	91
Limako B.V. v. H. Hentz & Co. Inc.	[C.A.]	23
Lind (Peter) and Co. Ltd. v. Constable Hart and Co. Ltd.	[Q.B.(Com.Ct.)]	248
Ludecke (Dame Rita Hildegard Aranka) v. Canadian Pacific Airlines Ltd.	[Can. Ct.]	260

CONTENTS—*continued*

	COURT	PAGE
M.V. *Lady Sophie* et al:—General Electric Co. v.	[U.S. Ct.]	173
McDonald, R. H. Ltd. & Barclays Bank Ltd.:—Siebe Gorman & Co. Ltd.; Same v. Barclays Bank Ltd.	[Ch. D.]	142
McNicol Brownlie and Scottish Timber Products Ltd.:—Borden (U.K.) Ltd. v.	[Ch. D.]	168
Manifatture Tessile Laniera Wooltex v. J. B. Ashley Ltd.	[C.A.]	28
Marabu Porr, The	[C.A.]	331
Marbrook Freight Ltd. v. K.M.I. (London) Ltd.	[C.A.]	341
Mariani and Goodville Ltd:—Maxform S.p.A. v.	[Q.B. (Com. Ct.)]	385
Maxform S.p.A. v. Mariani and Goodville Ltd.	[Q.B. (Com. Ct.)]	385
Michael, The	[C.A.]	1
Midland Bank Ltd.:—Box v.	[Q.B. (Com. Ct.)]	391
Mihalios Xilas, The	[H.L.]	303
Miles, Smith, Anderson & Game Ltd. and Excess Insurance Co. Ltd.:—Woolcott v.	[Q.B.]	210
Mitchell (George) (Chesterhall) Ltd.:—Finney Lock Seeds Ltd. v.	[Q.B.]	301
N.W.L. Ltd. v. Nelson and Laughton (The *Nawala* (No. 2))	[C.A.]	317
National Employers Mutual General Insurance Association Ltd. v. Hayden	[Q.B.]	235
Nawala, The	[C.A.]	317
Nelson and Laughton:—N.W.L. Ltd. v.	[C.A.]	317
Ozalid Group (Export) Ltd. v. African Continental Bank Ltd.	[Q.B. (Com. Ct.)]	231
Parish:—British Airways Board v.	[C.A.]	361
Paterson v. Costain & Press (Overseas) Ltd. and Others	[C.A.]	204
Penelope, II, The	[Q.B. (Adm. Ct.)]	42
Pennine Insurance Co. Ltd.:—Walker v.	[Q.B.]	139
Piermay Shipping Co. S.A. and Brandt's Ltd. v. Chester (The *Michael*)	[C.A.]	1
Porr and Others v. Shaw, Johnson and Holden (The *Marabu Porr*)	[C.A.]	331
Pythia, The	[C.A.]	184
R.T.P. Equipment Ltd.:—Thoni G.m.b.H. & Co. K.G. v.	[C.A.]	282
Rayner, (J.H.) & Co. Ltd.:—Bremer Handelsgesellschaft m.b.H. v.	[C.A.]	216
Rederiaktibolaget Sally:—Termarea S.R.L. v.	[Q.B. (Com. Ct.)]	439
Rolfe Lubbell & Co. v. Keith and Greenwood	[Q.B.]	75
Royal Bank of Canada and Others (No. 2):—United City Merchants (Investments) Ltd. and Glass Fibres and Equipment Ltd. v.	[Q.B. (Com. Ct.)]	498
Rust v. Abbey Life Assurance Co. Ltd. and Another	[C.A.]	334
S.T.M. Grain Ltd. (Charles E. Ford Ltd.):—Continental Grain Export Corporation v.	[Q.B. (Com. Ct.)]	460
Sable Contractors Ltd. v. Bluett Shipping Ltd.	[C.A.]	33
Sanko Steamship Co. Ltd. v. Tradax Export S.A.	[C.A.]	273
Sarma Navigation S.A. v. Sidermar S.p.A. (The *Sea Pioneer*)	[Q.B. (Com. Ct.)]	408

CONTENTS—*continued*

	COURT	PAGE
Scottish Timber Products Ltd. and McNicol Brownlie:—Borden (U.K.) Ltd. v.	[Ch. D.]	168
Seabridge Shipping Ltd.:—Antco Shipping Ltd. v.	[C.A.]	267
Sea Pioneer, The	[Q.B. (Com. Ct.)]	408
Shaw, Johnson and Holden:—Porr and Others v.	[C.A.]	331
Sidermar S.p.A.:—Sarma Navigation S.A. v.	[Q.B. (Com. Ct.)]	408
Siebe Gorman & Co. Ltd. v. Barclays Bank Ltd.; Same v. R. H. McDonald Ltd. and Barclays Bank Ltd.	[Ch. D.]	142
Sissy Steamship Co. Ltd.:—Bulk Transport Corporation v.	[Q.B. (Com. Ct.)]	289
State Trading Corporation of India, The:—Kollerich & Cie S.A. v.	[Q.B.(Com.Ct.)]	442
Termarea S.R.L. v. Rederiaktibolaget Sally (The *Dalny*)	[Q.B. (Com. Ct.)]	439
Third Chandris Shipping Corporation, Western Sealane Corporation and Aggelikai Ptera Compania Maritima S.A. v. Unimarine S.A. (The *Genie, Pythia* and *Angelic Wings*)	[C.A.]	184
Thomas and Others:—Barclays Bank Ltd. v.	[Q.B.]	505
Thomaseverett, The	[Q.B. (Adm. Ct.)]	402
Thoni G.m.b.H. & Co. K.G. v. R.T.P. Equipment Ltd.	[C.A.]	282
Toepfer:—Cerealmangimi S.p.A. v.	[Q.B. (Com. Ct.)]	72
Toprak Mahsulleri Ofisi v. Finagrain Compagnie Commerciale Agricole et Financiere S.A.	[C.A.]	98
Tradax Export S.A.:—Bunge Corporation v.	[Q.B. (Com. Ct.)]	477
Tradax Export S.A.:—Cast Shipping Ltd. v.	[C.A.]	280
Tradax Export S.A.:—Sanko Steamship Co. Ltd. v.	[C.A.]	273
Unimarine S.A.:—Third Chandris Shipping Corporation, Western Sealane Corporation and Aggelikai Ptera Compania Maritima S.A. v.	[C.A.]	184
United Bank Ltd.:—General Produce Co. v.	[Q.B. (Com. Ct.)]	255
United City Merchants (Investments) Ltd. and Glass Fibres and Equipment Ltd. v. Royal Bank of Canada and Others (No. 2)	[Q.B. (Com. Ct.)]	498
Vasso, The	[Q.B. (Com. Ct.)]	412
Veevoeder Import Export Vimex B.V.:—Edm. J. M. Mertens & Co. P.V.B.A. v.	[Q.B. (Com. Ct.]	372
Vishva Prabha, The	[Q.B. (Adm. Ct.)]	286
Walker v. Pennine Insurance Co. Ltd.	[Q.B.]	139
Warinco A.G. v. Andre & Cie S.A.	[Q.B. (Com. Ct.)]	298
Westcoast Food Brokers Ltd. and Others v. The Ship *Hoyanger* and Westfal-Larsen & Co. A/S (The *Hoyanger*)	[Can. Ct.]	79
Westfal-Larsen & Co. A/S and The Ship *Hoyanger*:—Westcoast Food Brokers Ltd. and Others v.	[Can. Ct.]	79
Western Sealane Corporation, Aggelikai Ptera Compania Maritima S.A. and Third Chandris Shipping Corporation v. Unimarine S.A.	[C.A.]	184
Woolcott v. Excess Insurance Co. Ltd. and Miles, Smith, Anderson & Game Ltd. (No. 2)	[Q.B.]	210
Yasin, The	[Q.B. (Com. Ct.)]	45

LLOYD'S LAW REPORTS

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

Assistant Editor: WENDY EVANS, B.A., Barrister

[1979] VOL. 2] **The "Michael"** PART 1

COURT OF APPEAL

Feb. 28, Mar. 1, 2, 6, 7, 8, 9, 12, 13 and 14, 1979

PIERMAY SHIPPING CO. S.A. AND BRANDT'S LTD.
v.
CHESTER

(THE "MICHAEL")

Before Lord Justice ROSKILL, Lord Justice BRANDON and Sir DAVID CAIRNS

Insurance (Marine) — Scuttling — Total loss of vessel — Owners claimed for loss by perils of the seas — Whether claim fraudulent — Claim for loss by barratry — Whether vessel deliberately sunk with knowledge and privity of owners.

The owners insured their vessel *Michael* with the defendant Lloyd's underwriters under a standard marine policy which included inter alia loss by barratry.

On Jan. 11, 1973, the vessel, with a cargo of soda ash, was on a voyage from Baton Rouge in the United States to Puerto Cabello in Venezuela. Between Jan. 14 and 17, the vessel had various engine breakdowns and encountered heavy weather. At about midnight on Jan. 20/21, the engines stopped and only ran again for a few hours on Jan. 22.

After attempts to repair the engines had failed, the master sent out an SOS and asked for assistance. Throughout Jan. 23, the vessel drifted helplessly in heavy seas and strong winds and the crew feared they might have to abandon her.

In the early hours of Jan. 24, the *Rescue,* one of the tugs which had set out to assist the vessel, reached her but due to the rough weather was only able to pass a towing cable at about 07 30. At about the same time it was noticed on board *Michael* that the engine room was flooding. Komiseris, who had only been taken on in December, 1972, was the officer on watch together with a Colombian oiler. Shortly thereafter the towline was released from *Michael* without orders and for no apparent reason, and shortly thereafter there was a blackout throughout the vessel apparently due to the water rising to the level of the generators. The crew panicked and abandoned the ship without any formal orders from the master who had asked for portable pumps from one of the tugs. These could not be provided and the master then also abandoned the ship. All the crew were taken on board the *Cardon,* the second tug which had meanwhile reached the vessel, and then to Curacao without any loss of life.

The vessel sank and became a total loss, and the owners claimed inter alia for loss by barratry, it being common ground between the parties that the vessel had been deliberately sunk by Komiseris.

The defendant underwriters denied liability contending that the vessel had been deliberately sunk by Komiseris with the knowledge and consent of the owners. Alternatively they pleaded that the owners' initial claim for a loss by perils of the seas had been put forward fraudulently or recklessly on the ground that the owners then knew or strongly suspected that the vessel had in fact been deliberately sunk by Komiseris. The owners denied all knowledge.

Held, by Q.B. (Com. Ct.) (KERR, J.), that (1) to establish a loss by the insured peril of barratry involved establishing both a deliberate sinking and the absence of the owners' consent but if the Court was left in doubt whether the owners consented or not then the claim failed; and common sense required that the owners had to satisfy the Court on a clear balance of probability that Komiseris had sunk the vessel without their knowledge or consent;

(2) on the credibility of the witness and the facts, it was at least probable that the thought of scuttling the ship never crossed the owners' minds at all also bearing in mind that (a) no one decided to scuttle a ship lightly since there were too many risks of failure or blackmail or both; (b) on the figures, an

unsuccessful scuttling attempt would have cost far more than the profit to be made out of a successful one; and (c) since the owners were only just beginning to build up on the business of ship-owning and ship managing and their reputation in the financial and insurance markets, the last thing which they would have wanted was a total loss; (d) any plot to sink the *Michael* must have been connected with Komiseris' appearance on the scene and would almost certainly have been triggered off by the fact that he was someone able and willing to scuttle the vessel as to participate in her scuttling; (e) although it could not be suggested that the method adopted of sinking the vessel, i.e. flooding the engine rooms, was inconsistent with there having been any plot to scuttle the vessel, such method did not lend any real support to the defendants' suggestion that some experienced technical mind must have been brought to bear on the best method of scuttling the vessel; and any plot must have been made and worked out after Komiseris had appeared on the scene;

(3) the thought of sinking the vessel never crossed the owners' minds at all;

(4) the question whether Komiseris was inherently unlikely to act without instructions had to be answered by taking into account his character and personality and what he did and said and what he did not say; and the fact that he was already a scuttler before joining the *Michael* made it more credible that he might be a person who could have acted on his own initiative;

(5) since Komiseris sank the *Michael* deliberately without any consent or foreknowledge on the part of the owners the claim for loss by barratry succeeded;

(6) the owners' original claim for loss by perils of the seas had not been put forward fraudulently or recklessly in that the owners were only worried about unseaworthiness and had only thought of scuttling in the context of a defence on which the defendants were likely to seek to rely in order to force a settlement; there was nothing fraudulent or reckless about the claim and the pleas failed.

Judgment for the owners.

On appeal by the defendant underwriters:

Held, by C.A. (ROSKILL and BRANDON, L.JJ., and SIR DAVID CAIRNS), that (1) since the evidence had been approached upon the basis that it was, as the learned Judge had held, for the owners to prove the absence of complicity upon "a clear balance of probabilities", there was no ground for disturbing the learned Judge's conclusion that the owners had successfully and satisfactorily discharged that burden (*see* p. 12, col. 2; p. 21, col. 2;

(2) it was impossible to see how, on the learned Judge's findings of fact, it could possibly be said that when the claim for an actual total loss by perils of the sea was first presented it had been presented fraudulently (*see* p. 22, col. 1); there was nothing to suggest that until October, 1973, the perils of the sea claim had not been honestly believed in, whatever evidence might have come to light suggesting to a fresh and expert mind that the proper basis of claim was for a loss by barratry and not by perils of the sea (*see* p. 22, col. 2); and the defendants had completely failed to discharge the burden which rested entirely upon them, of showing that a fraudulent claim had been made or maintained by the owners in the person of Mr. Pierrakos (*see* p. 22, col. 2);

(3) in the circumstances there were no grounds shown for interfering with the decision of the learned Judge and the appeal therefore failed and would be dismissed (*see* p. 22, col. 2).

Per ROSKILL, L.J. (at p. 12): It is . . . clear that no trial Judge can make himself immune from the due process of judicial review by an Appellate Court by seeking to rely upon the demeanour of witnesses when other evidence relevant to his evaluation of their demeanour points strongly to the other way. But an Appellate Court must always be very slow to disturb the judgment of a Judge who both saw and heard the witnesses in a case where he, unlike the Appellate Court, must clearly be in a much better position to determine where the truth lies . . . A trial Judge must always test his impression of the veracity of a witness based on a demeanour against other evidence in the case which may point the other way. There is no doctrine of judicial infallibility for trial Judges . . . Clearly if a trial Judge fails to take proper advantage of his position in seeing and hearing the witnesses an Appellate Court will be more ready to interfere. But even then it will be very slow indeed to do so unless his failure to take advantage of his position is clearly shown . . .

The following cases were referred to in the judgment:

Compania Martiartu v. Royal Exchange Assurance Corporation, (C.A.) (1922) 13 Ll.L.Rep. 298; [1923] 1 K.B. 650; (H.L.) (1924) 19 Ll.L.Rep. 95; [1924] A.C. 850;

Demetriades & Co. v. Northern Assurance Co. (The *Spathari*), (1923) 17 Ll.L.Rep. 327; (1924) 21 Ll.L.Rep. 265; [1924] S.C. 182;

Gold Sky, The, [1972] 2 Lloyd's Rep. 187;

Hontestroom, The, (H.L.) (1926) 25 Ll.L.Rep. 377; [1927] A.C. 37;

Hornal v. Neuberger Products Ltd., (C.A.) [1957] 1 Q.B. 247;

Issaias (Elfie A.) v. Marine Insurance Co. Ltd., (C.A.) (1923) 15 Ll.L.Rep. 186;

Onassis v. Vergottis, (H.L.) [1968] 2 Lloyd's Rep. 403;

Powell v. Streatham Manor Nursing Home, (H.L.) [1935] A.C. 243;

Regina v. Hester, (H.L.) [1973] A.C. 296;

Regina v. Kilbourne, (H.L.) [1973] A.C. 729.

This was an appeal by the defendant, Mr. A. H. Chester, a representative Lloyd's underwriter from the decision of Mr. Justice Kerr, ([1979] 1 Lloyd's Rep. 55) given in favour of the owners, Piermay Shipping Co. S.A. and Brandt's Ltd., the mortgagees and assignees of the policy moneys and holding in effect that the owners' vessel *Michael* had been deliberately sunk without the knowledge and consent of the owners.

The application referred to in Lord Justice Roskill's reasons for judgment was heard by the Court of Appeal (Megaw, Bridge and Templeman L.JJ.) and the following judgment was delivered on Mar. 5, 1979:

Lord Justice MEGAW: This is a motion brought before this division of the Court in connection with an appeal in the case of *Piermay Shipping Co. S.A. and Brandt's Ltd. v. Arthur Henry Chester,* which is currently being heard before another division of this Court (see p. 5, post).

The motion before us is a motion on behalf of the defendant representative underwriter, Mr. Chester, who is the appellant in the substantive appeal and who desires leave of the Court to adduce fresh evidence on the hearing of the appeal. The appeal is one arising out of a case which was heard in the Commercial Court before Mr. Justice Kerr, a hearing which lasted for many days, beginning in November, 1977, and resulting in a reserved judgment being given in the month of June, 1978 (see [1979] 1 Lloyd's Rep. 55).

The appeal came on for hearing, as I say, in another division of this Court, in the middle of last week. The appellant then indicated, through his Counsel, that he desired to apply for leave to adduce fresh evidence. For reasons that seemed good and proper, it was decided, I think with the consent of all concerned, that that application should be heard by another division of the Court, the reason for that being that it was feared that if the fresh evidence were to come to the notice of the Court that was hearing the appeal, and if that Court arrived at the conclusion that the fresh evidence should not be admitted, it might make it difficult for that Court to put out of its mind altogether, in its ultimate decision of the appeal, the evidence which in those circumstances it would have seen and decided not to admit.

In those circumstances, as will, I think, be obvious, it is desirable that as little as possible should be said in this Court, in giving judgment, in relation to any detail of the matters that have been canvassed before us. If, therefore, this judgment which I am delivering is (as I expect it to be) a judgment of relative brevity, it will be understood by all concerned that it is no disrespect to the very able and interesting arguments that have been put forward by Counsel on behalf of the applicant before us, the appellant in the appeal.

With regard to the fresh evidence which it is sought to admit, the principle which we have to follow is, so far as it is a matter of principle at all, dependent in the first instance upon the provisions of R.S.C., O. 59, r. 10 (2). It provides that—

> The Court of Appeal shall have power to receive further evidence on questions of fact [—and so forth—] but, in the case of an appeal from a judgment after trial or hearing of any cause or matter on the merits, no such further evidence (other than evidence as to matters which have occurred after the date of the trial or hearing) shall be admitted except on special grounds.

I am prepared to accept, for the purposes of this decision, that the evidence which it is sought to admit in this case can properly, in its substance, be regarded as being evidence as to matters which have occurred after the date of the trial or hearing. I say that bearing in mind that we have not felt it necessary to invite the assistance of Mr. Bingham, Counsel for the respondent; and anything that I say on such a matter will be understood as being subject to the reservation that he has not had the opportunity to seek to persuade us to the contrary.

It is accepted by Mr. Evans, on behalf of the appellant, that, in spite of that parenthetical inclusion in r. 10 (2), nevertheless, even in respect of events which have happened between the date of the judgment appealed from and the date of the hearing of the appeal, the Court has to exercise great care before it decides to admit fresh evidence of such matters.

The principle, so far as it is a principle, is I think shown helpfully in a short passage in the judgment of Lord Justice Denning (as he then was) in *Ladd v. Marshall,* [1954] 1 W.L.R. 1489, at p. 1491:

> To justify [—he says—] the reception of fresh evidence or a new trial, three conditions must be fulfilled: first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial; secondly, the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive; thirdly, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible.

For the present purposes, I am prepared to assume that conditions (1) and (3) of those three

conditions would or might have been shown to have been fulfilled in respect of this application. So far as the second of the conditions is concerned, in my judgment, on that matter, which must be a matter of fact and degree and a matter of discretion, the appellant fails to establish that this Court ought to grant him leave.

I would refer also to some observations made by Lord Wilberforce in *Mulholland v. Mitchell,* [1971] A.C. 666, first at p. 678E. There, having referred to the rule which I have read, he said:

> The terms of the Rule show that, as regards matters occurring since the trial, no special grounds need be shown; the matter lies in the discretion of the court. But on what principle ought this discretion to be exercised? [— Then, towards the bottom of p. 679, at letter "G", he says:—] I do not think that, in the end, much more can usefully be said than, in the words of my noble and learned friend, Lord Pearson, that the matter is one of discretion and degree.

Lord Wilberforce then refers to the case of *Murphy,* [1969] 1 W.L.R. 1023, at p. 1036. So there Lord Wilberforce is saying, with all the authority which such an observation of his commands, that the matter is one of discretion and degree. Lord Wilberforce went on:

> Negatively, fresh evidence ought not to be admitted when it bears upon matters falling within the field or area of uncertainty, in which the trial judge's estimate has previously been made. Positively, it may be admitted if some basic assumptions, common to both sides, have clearly been falsified by subsequent events, particularly if this has happened by the act of the defendant. Positively, too, it may be expected that courts will allow fresh evidence when to refuse it would affront common sense, or a sense of justice. All these are only non-exhaustive indications; the application of them, and their like, must be left to the Court of Appeal. The exceptional character of cases in which fresh evidence is allowed is fully recognised by that Court.

Applying the criteria, or the guidelines, which are referred to there, I take the view that the evidence which it is sought to adduce in this Court does not fall within those guidelines or meet those criteria.

Reference has also been made in Mr. Evans' interesting argument to passages in *Meek v. Fleming,* [1961] 2 Q.B. 366. He refers in particular to a suggested distinction between cases in which (as he puts it) there are matters which go merely to credit on the one hand and, on the other hand, cases where credit is an issue in the case. Mr. Evans submits that in the present case credit is an issue and that, therefore, the criteria applicable to that type of case ought to be applied here. In Lord Justice Holroyd Pearce's judgment, the leading judgment in *Meek v. Fleming,* at the bottom of p. 377, the learned Lord Justice said:

> In the case of fresh evidence relating to an issue in the case, the court will not order a new trial unless such evidence would probably have an important influence on the result of the case, though such evidence need not be decisive.

So there the learned Lord Justice is referring to fresh evidence relating to an issue in the case; and the test which he lays down follows precisely the words which were used by Lord Justice Denning in the passage from *Ladd v. Marshall* which I have read. In my judgment, that criterion is not satisfied by what has been put forward in the present case.

If, contrary to the view which I have formed, I had thought that a good basis had been shown for allowing this fresh evidence to be adduced, I should have thought that, if the Court hearing the appeal, having considered the fresh evidence, had thought that it might be material as being liable to affect the result of the appeal, that Court would have been, at least, likely to have regarded an order for a fresh trial as being the appropriate course. Mr. Evans was, I think, disposed to agree that, though he would have been prepared, if necessary, to ask the other division of the Court for a new trial, such a course was not one that would be likely to be granted without the most mature consideration in a matter of this sort. Indeed, I should have thought that it might result in making justice, for all practical purposes, impossible. But, on the view that I have expressed earlier, that consideration does not arise.

I would refuse the motion.

Lord Justice BRIDGE: I agree.

Lord Justice TEMPLEMAN: I agree.

Mr. Anthony Evans, Q.C., Mr. Roger Buckley and Mr. W. R. Siberry (instructed by Messrs. Ince and Co.) for the appellant defendants; Mr. Thomas Bingham, Q.C., Mr. Jonathan Mance and Mr. Timothy Saloman (instructed by Messrs. Hill Dickinson & Co.) for the respondent plaintiff owners.

The further facts are stated in the reasons for the judgment of the Court, delivered by Lord Justice Roskill, the appeal having been dismissed on Mar. 14, 1979.

Friday, Mar. 23, 1979

REASONS FOR JUDGMENT

Lord Justice ROSKILL: The reasons for judgment which I have prepared and am about to read are the reasons for the judgment of the Court. Lord Justice Brandon is unable to be here today.

On Mar. 14, 1979, at the conclusion of the submissions by Mr. Anthony Evans, Q.C., on behalf of the appellant underwriters, we indicated that in the view of each member of this Court, reached after the most careful consideration of those submissions extending over some 10 days, no grounds had been shown for disturbing the judgment of the learned trial Judge, Mr. Justice Kerr, in favour of the respondents to this appeal, the plaintiffs in the action. The appeal had been brought by underwriters from the learned Judge's decision dated June 9, 1978. Since, throughout the long trial which took 42 days before the learned Judge at the end of 1977 and in the early part of 1978, and again for some 10 days in this Court, underwriters had charged the respondent's principal director and shareholder, Mr. Nestor Pierrakos, with fraud in two grave respects, and since we saw no ground for interfering with the learned Judge's rejection of both those charges, we thought it only right, in fairness to Mr. Pierrakos, so to state at once at the conclusion of Mr. Evans' submissions without troubling Mr. Bingham, Q.C., to address us on the respondents' behalf. We therefore, on Mar. 14, 1979, dismissed underwriters' appeal with costs, saying that we would give our reasons in writing for so doing at a later date. We now give those reasons.

The long and characteristically clear and careful judgment of the learned Judge occupies some 74 pages of transcript. It is, however, now reported at length in [1979] 1 Lloyd's Rep. 55. The judgment is therefore easily available to those who seek to know the whole story of this case in all its detail. To repeat the story there so fully set out would merely be repetitive and serve no useful purpose. In this judgment, therefore, we propose gratefully to borrow, by reference, many passages from the learned Judge's judgment and thus this judgment will be much shorter than otherwise would be the case in an appeal which has occupied so long before this Court. The learned Judge himself pointed out at p. 56 of the report ([1979] 1 Lloyd's Rep.) that that judgment only "represents the tip of the iceberg of all the points which were investigated". The present judgment will not deal with all the points that were canvassed in argument before this Court. We propose to deal only with those which are necessary to explain why we have felt bound to reject the careful submissions advanced to us on behalf of the appellant underwriters.

The story which was unfolded before Mr. Justice Kerr, and again in this Court, is indeed a dramatic one, even by the standards of stories told in the various cases of alleged scuttling—sometimes proved beyond all doubt and sometimes not so proved—which have come before the Courts of this country in the last half century. In one respect, as we hope later to show in this judgment, this case is unique among such cases. The first respondents (we shall call them "Piermay") owned a motor vessel named the *Michael*. The *Michael* was built in 1962 in Japan. She was of a type known as a Japanese logger. She was mortgaged to the second respondents ("Brandt's") for $300,000. The *Michael* was of a type which, for various reasons, was expensive to operate, especially in the western hemisphere, where she was trading in the months before her loss on Jan. 24, 1973. The details of her purchase in June, 1971, and of the finance of that purchase will be found at pp. 68-69 of [1979] 1 Lloyd's Rep. Whatever may have been said to the contrary in oral evidence it cannot seriously be doubted on the documentary evidence, for what that rather meagre evidence is worth, that the financial results of the *Michael's* operation were, to say the least, disappointing. She was, at the relevant time, insured on the London insurance market for $600,000. Piermay's brokers were Sir William Garthwaite (Insurance) Ltd. ("Garthwaite's").

On Jan. 24, 1973, the *Michael* sank and became an actual total loss. A few days later Mr. Gifford Gordon, the senior partner in Hill, Dickinson & Co., the well-known solicitors in the City, flew to Athens to act on behalf of Piermay. Mr. Gordon had been brought in through Garthwaite's. He had no previous knowledge of Piermay or of Mr. Pierrakos. The purpose of his visit was to take statements from those officers and members of the crew who were Greek and who, by this time, had returned to Piraeus. Accordingly he took certain statements, for example from the master and the chief engineer. But he did not take a statement from the second engineer, by name Komiseris, who had at least supposedly been on watch in the engine room between 04 00 hours and 08 00 hours on the morning of Jan. 24, 1973 (between which times the fatal incursion of sea water is said to have begun). Nor did Mr. Gordon take a statement from the chief officer. Mr. Gordon later returned to London. He prepared drafts of those statements which he had taken and of a report which he sent to Mr. Pierrakos—in the case of the statements for signature by the various makers, and in the case

of the report for personal approval by Mr. Pierrakos. It is clear that that report was at all times destined for submission to underwriters in support of a claim for an actual total loss by perils of the sea. Mr. Gordon also drafted and forwarded to Mr. Pierrakos a "sea protest" for the master to use. This was all done on Feb. 6, 1973. Mr. Pierrakos replied on Feb. 10, 1973, enclosing signed and slightly amended statements by the master and chief engineer. Of the draft report he wrote:

> Your report is in all respects correct . . .

The report was then signed on behalf of Hill, Dickinson & Co. by Mr. Gordon. Copies were then sent to Garthwaite's for presentation to underwriters and to the West of England Protecting and Indemnity Association, who were interested as insurers of any possible liability to cargo—the *Michael* had been fully loaded when lost—and in whose sister defence club we were told the *Michael* had been entered. The report alleged an actual total loss by perils of the sea. It stated that the cause of the incursion of sea water must be speculative, but most probably was the fracture of a suction pipe which, being below sea level, would remain under pressure and continue to admit sea water until the valve controlling the flow of water into the pipe was closed.

This, then, was and remained the basis of Piermay's claim until much later in 1973 when, as we shall subsequently relate, the whole basis of the claim was radically altered following a conference between Mr. Pierrakos, his fellow director Mr. Mayson and Mr. Gifford Gordon with Mr. Basil Eckersley and Mr. Jonathan Mance of Counsel. That conference took place on Oct. 3, 1973. The claim for a total loss by perils of the sea was dropped and a claim for a total loss by barratry advanced for the first time, the alleged barratry being by the second engineer, Komiseris, from whom Mr. Gordon had not taken a statement on the occasion of the Athens visit just referred to. That claim also was rejected by underwriters.

We have thus far outlined the story from the plaintiffs' side down to the latter part of 1973. We turn now to outline it from the point of view of underwriters. In December, 1972, the *Michael* had been at Mobile. There was to be a change of master, Captain Maistralis replacing Captain Nicoforas. The *Michael's* chief engineer was a Greek certificated engineer named Sumbasis. The previous September Piermay had engaged a man named Babalis as superintendent engineer. Shortly before Christmas, 1972, a second engineer was required for the *Michael's* next voyage. Babalis apparently volunteered to find one. It had been intended that Babalis should fly to Mobile as superintendent engineer with a view to investigating engine trouble and to supervise any necessary repairs, and also to supervise the *Michael's* next drydocking (see p. 57 of the report). Babalis recruited Komiseris, whom apparently he knew. Mr. Pierrakos engaged Komiseris on Babalis's recommendation. Underwriters' case was that Babalis recruited Komiseris so that those two together might fly to Mobile and, with Mr. Pierrakos's connivance, sink the ship at the first convenient opportunity. It was not suggested before this Court that Mr. Pierrakos had foreknowledge of the time of that sinking or of the intended method of sinking or details of the plan to sink the *Michael*.

The new master, Babalis and Komiseris were due to fly to Mobile to Athens on Dec. 26, 1972. On Dec. 24, 1972, Babalis, together with his fiancee, was killed in a motor accident at Lamia, north of Athens. Komiseris flew out with the master, kept, it was said, in ignorance of Babalis's death until after the flight had taken off, when he read a report of the tragedy in a Greek newspaper.

Komiseris joined the ship at Mobile. The *Michael* left Mobile on Jan. 11, 1973, for Baton Rouge, where she loaded a cargo of soda ash in bulk for Puerto Cabello in Venezuela. She then left Baton Rouge on what proved to be her last voyage.

On any view of this case that voyage was a disaster. There were various engine breakdowns between Jan. 14 and 22. Attempts to repair the engines failed. The details of the breakdowns and of the attempted rescue are recorded at p. 79 of [1979] 1 Lloyd's Rep., in the log and report of the tug appropriately named *Rescue,* in the log of the second tug, the *Cardon,* which in the event rescued the crew after the *Michael* sank, and in the radio log of the *Rescue.* In passing it is necessary to point out that the times in this last log are Greenwich Mean Time, whereas the others are local times. We were told that there was a five-hour difference between those local times and G.M.T., and a seven-hour difference between those local times and Athens times. When reading some of the telex messages and other messages it is necessary to bear those time differences in mind.

Perhaps the most important entry in the *Rescue's* log is at 08 00 hours local time:

> Crew members of Michael cast off Rescue's tow wire. A lifeboat was launched for Michael and several of her crew managed to board same. Rescue commenced heaving in her tow wire. A number of Michael's crew went on board tug Cardon from the lifeboat. Tug Cardon reported Michael to be sinking