

LLOYD'S LAW REPORTS

Editor:

Miss M. M. D'Souza, LL.B.
of the Middle Temple, Barrister

1989
Volume 1

|LLP|

LONDON NEW YORK HAMBURG HONG KONG
LLOYD'S OF LONDON PRESS LTD.

1989

Lloyd's of London Press Ltd.
Legal Publishing and Conferences Division
One Singer Street, London EC2A 4LQ

U. S. A. AND CANADA
Lloyd's of London Press Inc.
Suite 523, 611 Broadway
New York, N. Y. 10012, U.S.A.

GERMANY
Lloyd's of London Press GmbH
59 Ehrenbergstrasse
2000 Hamburg 50
West Germany

SOUTH EAST ASIA
Lloyd's of London Press (Far East) Ltd.
Room 1101, Hollywood Centre
233 Hollywood Road
Hong Kong

© Lloyd's of London Press Ltd. 1989

All rights reserved. No part of this publication may be reproduced,
stored in a retrieval system, or transmitted, in any form or by any
means, electronic, mechanical, photocopying, recording and/or
otherwise, without the prior permission of
Lloyd's of London Press Ltd.

ISSN 0024-5488

ISBN 1-85044-252-5

CASES JUDICIALLY CONSIDERED

- Abidin Daver*, The [1984] 1 Lloyd's Rep. 339; **considered**: [1989] 1 Lloyd's Rep. 181
Aegis Progress, The [1983] 2 Lloyd's Rep. 570; **considered**: [1989] 1 Lloyd's Rep. 232
Allobrogia, The [1979] 1 Lloyd's Rep. 190; **considered**: [1989] 1 Lloyd's Rep. 239
Alastor, The [1981] 1 Lloyd's Rep. 581; **considered**: [1989] 1 Lloyd's Rep. 349
Annefield, The [1971] 1 Lloyd's Rep. 1; **applied**: [1989] 1 Lloyd's Rep. 103
Antaios, The [1984] 2 Lloyd's Rep. 235; **considered**: [1989] 1 Lloyd's Rep. 30
Aries, The [1977] 1 Lloyd's Rep. 334; **considered**: [1989] 1 Lloyd's Rep. 431
Babanaft International Co. S.A. v. Bassatne, [1988] 2 Lloyd's Rep. 435; **applied**: [1989] 1 Lloyd's Rep. 111; [1989] 1 Lloyd's Rep. 122
Banco, The [1971] 1 Lloyd's Rep. 49; **considered**: [1989] 1 Lloyd's Rep. 388
Berny, The [1977] 2 Lloyd's Rep. 533; **considered**: [1989] 1 Lloyd's Rep. 388
Brandt v. Liverpool Brazil and River Plate Steam Navigation Co., (1923) 17 Ll.L.Rep. 142; **considered**: [1989] 1 Lloyd's Rep. 213
Bremer Vulkan Schiffbau und Maschinenfabrik v. South India Corporation, [1981] 1 Lloyd's Rep. 253; **applied**: [1989] 1 Lloyd's Rep. 403
Calf v. Sun Insurance Office, (1920) 2 Ll.L. Rep. 304; **applied**: [1989] 1 Lloyd's Rep. 379
Cattle v. Stockton Waterworks Co., (1875) L.R. 10 Q.B. 453; **considered**: [1989] 1 Lloyd's Rep. 8
Constantine (Joseph) Steamship Ltd. v. Imperial Smelting Corporation Ltd., (1941) 70 Ll.L. Rep. 1; **considered**: [1989] 1 Lloyd's Rep. 148
Daff v. Midland Colliery Owners Mutual Indemnity Co. Ltd., (1913) 109 L.T. 418; **considered**: [1989] 1 Lloyd's Rep. 239
Eastham v. Newcastle United Football Club, [1964] 1 Ch. 413; **considered**: [1989] 1 Lloyd's Rep. 181
Evje, The [1974] 2 Lloyd's Rep. 57; **applied**: [1989] 1 Lloyd's Rep. 506
Gilbert-Ash v. Modern Engineering (Bristol) Ltd., [1974] A.C. 689; **considered**: [1989] 1 Lloyd's Rep. 239
Gouriet v. Union of Post Office Workers, [1978] A.C. 435; **considered**: [1989] 1 Lloyd's Rep. 181
Government of Newfoundland v. Newfoundland Railway Co., (1888) 13 App. Cas. 199; **considered**: [1989] 1 Lloyd's Rep. 431
Hannah Blumenthal, The [1983] 1 Lloyd's Rep. 103; **applied**: [1989] 1 Lloyd's Rep. 148
Himmerland, The [1965] 2 Lloyd's Rep. 353; **applied**: [1989] 1 Lloyd's Rep. 506
Johanna Oldendorff, The [1973] 2 Lloyd's Rep. 285; **considered**: [1989] 1 Lloyd's Rep. 1
Ladd v. Marshall, [1954] 1 W.L.R. 1489; **applied**: [1989] 1 Lloyd's Rep. 33
Leathers Best Inc. v. SS. Mormaclynx, [1971] 2 Lloyd's Rep. 476; **applied**: [1989] 1 Lloyd's Rep. 413
Lep Air Services Ltd. v. Rolloswin Ltd., [1973] A.C. 331; **applied**: [1989] 1 Lloyd's Rep. 312
Libyan Arab Foreign Bank v. Bankers Trust Co., [1988] 1 Lloyd's Rep. 259; **considered**: [1989] 1 Lloyd's Rep. 608
Lips, The [1987] 2 Lloyd's Rep. 311; **considered**: [1989] 1 Lloyd's Rep. 131
Maritime National Fish Ltd. v. Ocean Trawlers Ltd., (1935) 51 Ll.L.Rep. 299; **considered**: [1989] 1 Lloyd's Rep. 148
Momm v. Barclays Bank International Ltd., [1977] Q.B. 790; **considered**: [1989] 1 Lloyd's Rep. 608
Nema, The [1981] 2 Lloyd's Rep. 239; **considered**: [1989] 1 Lloyd's Rep. 30
New York Star, The [1980] 2 Lloyd's Rep. 317; **followed**: [1989] 1 Lloyd's Rep. 413
Northfield Steamship Co. v. Compagnie L'Union des Gaz, [1912] 1 K.B. 434; **applied**: [1989] 1 Lloyd's Rep. 1
Ocean Steamship Co. v. Queensland State Wheat Board, (1941) 68 Ll.L. Rep. 136; **applied**: [1989] 1 Lloyd's Rep. 403
Parouth, The [1982] 2 Lloyd's Rep. 351; **applied**: [1989] 1 Lloyd's Rep. 548
Post Office v. Norwich Union Fire Insurance Society Ltd., [1967] 1 Lloyd's Rep. 216; **applied**: [1989] 1 Lloyd's Rep. 465
Republic of Haiti v. Duvalier, [1989] 1 Lloyd's Rep. 111; **applied**: [1989] 1 Lloyd's Rep. 122
Rosa S, The [1988] 2 Lloyd's Rep. 574; **approved**: [1989] 1 Lloyd's Rep. 518
Sandgate, The (1929) 35 Ll.L.Rep. 9; **considered**: [1989] 1 Lloyd's Rep. 232
Sewell v. Burdick, (1884) 10 App. Cas. 74; **considered**: [1989] 1 Lloyd's Rep. 213
Siskina, The [1978] 1 Lloyd's Rep. 1; **considered**: [1989] 1 Lloyd's Rep. 112
Spiliada, The [1987] 1 Lloyd's Rep. 1; **applied**: [1989] 1 Lloyd's Rep. 548
Spiliada, The [1987] 1 Lloyd's Rep. 1; **considered**: [1989] 1 Lloyd's Rep. 181
Sudbrook Trading Estate Ltd. v. Eggleton, [1983] A.C. 444; **applied**: [1989] 1 Lloyd's Rep. 205
Swiss Bank Corporation v. Brink's-MAT Ltd., [1986] 2 Lloyd's Rep. 99; **followed**: [1989] 1 Lloyd's Rep.

- Tasman Pulp and Paper Co. Ltd. v. Brambles J.B. O'Loughlen Ltd., [1981] 2 N.Z.L.R. 225; **considered**: [1989] 1 Lloyd's Rep. 160
- Thomas (T. W.) & Co. Ltd. v. Portsea Steamship Co. Ltd., [1912] A.C. 1; **applied**: [1989] 1 Lloyd's Rep. 103
- Tres Flores*, The [1973] 2 Lloyd's Rep. 247; **considered**: [1989] 1 Lloyd's Rep. 603
- Trans World Airlines Inc. v. Franklin Mint and Others, [1984] 2 Lloyd's Rep. 432; **considered**: [1989] 1 Lloyd's Rep. 518
- Tropwave*, The [1981] 2 Lloyd's Rep. 159; **considered**: [1989] 1 Lloyd's Rep. 232
- Varennna*, The [1983] 2 Lloyd's Rep. 592; **applied**: [1989] 1 Lloyd's Rep. 103
- Zinovia*, The [1984] 2 Lloyd's Rep. 264; **considered**: [1989] 1 Lloyd's Rep. 33

STATUTES CONSIDERED

	PAGE
AUSTRALIA—	
SEA CARRIAGE OF GOODS ACT, 1924	403, 518
UNITED KINGDOM—	
ADMINISTRATION OF JUSTICE ACT, 1970	
s.4	30
ARBITRATION ACT, 1950	
s.27	62
BILL OF LADING ACT, 1855	
s.1	213
CARRIAGE BY AIR ACT, 1961	160
s.10	444
CIVIL JURISDICTION AND JUDGMENTS ACT, 1982	
s.25(1)	111
Schedule 1 art.1	548
art.21	388
art.22	388
MARINE INSURANCE ACT, 1906	
s.18(3)(a)	69
MARITIME CONVENTION ACT, 1911	
s.8	493
MERCHANT SHIPPING ACT, 1894	
s.546	58
s.742	58
MERCHANT SHIPPING (LIABILITY OF SHIPOWNERS AND OTHERS) ACT, 1958	
s.3	349
MISREPRESENTATION ACT, 1967	
s.2(1)	305
THIRD PARTIES (RIGHTS AGAINST INSURERS) ACT, 1930	239, 265, 289
s.1	465

CONTENTS

**NOTE: These Reports should be cited as
“[1989] 1 Lloyd’s Rep.”**

	COURT	PAGE
<i>Aghia Marina</i> , The	[Q.B. (Com. Ct.)]	62
<i>Alev</i> , The	[Q.B. (Com. Ct.)]	138
Alliance Assurance Co. Ltd.:—Continental Illinois National Bank & Trust Co. of Chicago and Xenofon Maritime S.A. v.	[C.A.]	33
<i>Amazonia</i> , The	[Q.B. (Com. Ct.)]	403
Amoco Oil Co. v. Parpada Shipping Co. Ltd. (The <i>George S.</i>) .	[C.A.]	369
Aquacultural Insurance Services Ltd., The, J. N. E. Butcher and Bain Dawes Ltd.:—Forsikringsaktieselskapet Vesta v.	(H.L.)	331
<i>Aramis</i> , The	[C.A.]	213
<i>Arras</i> and <i>Hoegh Rover</i> , The	[Q.B. (Com. Ct.)]	131
Assicurazioni Generali S.p.A. and Ralphs and Mansell and R. John Ralphs and John S. Mansell:—Normid Housing Association Ltd. v.	[C.A.]	265
<i>Atlantic Emperor</i> , The	[C.A.]	548
Attock Cement Co. Ltd. v. Romanian Bank for Foreign Trade .	[C.A.]	572
Bain Dawes Ltd., J. N. E. Butcher and The Aquacultural Insurance Services Ltd.:—Forsikringsaktieselskapet Vesta v.	[H.L.]	331
Baltic Shipping Co.:—Brown Boveri (Australia) Pty Ltd. v.	[Aust.]	518
Bangladesh Biman Corporation:—Keiko Holmes v.	[H.L.]	444
Bank of Boston Connecticut (formerly Colonial Bank v. European Grain & Shipping Ltd.)	[H.L.]	431
Bell, R. A.:—S. B. Booker v.	[Q.B.]	516
Booker, S. B. v. R. A. Bell	[Q.B.]	516
<i>Boukadoura</i> , The	[Q.B. (Com. Ct.)]	393
Boukadoura Maritime Corporation v. Societe Anonyme Marocaine de L'Industrie et du Raffinage (The <i>Boukadoura</i>)	[Q.B. (Com. Ct.)]	393
Bradley (Doris) v. Eagle Star Insurance Co. Ltd.	[H.L.]	465
Bremer Handelsgesellschaft m.b.H. v. Westzucker G .m.b.H. (No. 3)	[C.A.]	582
Bremer Handelsgesellschaft m.b.H. v. Westzucker G .m.b.H. (No. 3)	[Q.B. (Com. Ct.)]	198
Brown Boveri (Australia) Pty Ltd. v. Baltic Shipping Co. (The <i>Nadezhda Krupskaya</i>)	[Aust.]	518
Bulk Transport Group Shipping Co. Ltd.:—Seacrystal Shipping Ltd. v.	[H.L.]	1
Butcher (J. N. E.), Bain Dawes Ltd and The Aquacultural Insurance Services Ltd.:—Forsikringsaktieselskapet Vesta v.	[H.L.]	331
<i>Captain Panagos D.P.</i> , The	[C.A.]	33
Cargill U.K. Ltd. V. Continental U.K. Ltd.	[Q.B. (Com. Ct.)]	193
Catseye Maritime Co. Ltd.:—Seaworld Ocean Line Co. S.A. v. .	[C.A.]	30
Chapman, D. G.:—Terence Trevor Hayler	[C.A.]	490
Chellaram (P.S.) & Co. Ltd. v. China Ocean Shipping Co.	[Aust. Ct.]	413

CONTENTS—*continued*

	COURT	PAGE
China Ocean Shipping Co.:—P.S. Chellaram & Co. Ltd. v.	[Aust. Ct.]	413
Chloride Industrial Batteries Ltd. and The State of Jersey Telecommunications Board v. F. & W. Freight Ltd.	[Q.B.]	410
Colonial Bank (now Bank of Boston Connecticut) v. European Grain & Shipping Ltd. (The <i>Dominique</i>)	[H.L.]	431
Concord Petroleum Corporation and Occidental Worldwide Investment Corporation:—Garden Neptune Shipping Ltd. and Others v.	[Q.B.]	305
Continental Illinois National Bank & Trust Co. of Chicago and Xenophon Maritime S.A. v. Alliance Assurance Co. Ltd. (The <i>Captain Panagos D.P.</i>)	[C.A.]	33
Continental U.K. Ltd.:—Cargill U.K. Ltd. v.	[Q.B. (Com. Ct.)]	193
<i>Credo Eglantine</i> and <i>Inez</i> , The	[Q.B. (Adm. Ct.)]	593
C. T. N. Cash and Carry Ltd. v. General Accident Fire and Life Assurance Corporation Plc	[Q.B.]	299
Derby & Co. Ltd. and Others v. Anthony Henry David Weldon and Others	[C.A.]	122
Dimskal Shipping Co. S.A. v. International Transport Workers Federation (The <i>Evia Luck</i> (No. 2))	[Q.B. (Com. Ct.)]	166
<i>Dinara</i> , <i>Proteus</i> , <i>Free Wave</i> and <i>General Capinpin</i> , The	[C.A.]	232
Dino Services Ltd. v. Prudential Assurance Co. Ltd.	[C.A.]	379
<i>Dominique</i> , The	[H.L.]	431
<i>Dora</i> , The	[Q.B. (Com. Ct.)]	69
Duvalier (Jean-Claude) and Others:—Republic of Haiti and Others v.	[C.A.]	111
Eagle Star Insurance Co. Ltd.:—Doris Bradley v.	[H.L.]	465
<i>Eglantine Credo</i> and <i>Inez</i> , The	[Q.B. (Adm. Ct.)]	593
Ekali Shipping Co. Ltd.:—Transpetrol Ltd. v.	[Q.B. (Com. Ct.)]	62
<i>Ert Stefanie</i> , The	[C.A.]	349
Esso Australia Ltd.:—Vitol S.A. v.	[Q.B. (Com. Ct.)]	96
<i>Esso Bernicia</i> , The	[H.L.]	8
Esso Petroleum Co. Ltd. v. Hall Russell and Co. Ltd. (The <i>Esso Bernicia</i>)	[H.L.]	8
Estonian Shipping Co.:—Togo Amusements Corporation SARL and Another v.	[C.A.]	542
European Grain & Shipping Ltd.:—Colonial Bank (now Bank of Boston Connecticut) v.	[H.L.]	431
<i>Evia Luck</i> , The	[Q.B. (Com. Ct.)]	166
F. & W. Freight Ltd.:—Chloride Industrial Batteries Ltd. and The State of Jersey Telecommunications Board v.	[Q.B.]	410
<i>Fanti</i> , The	[C.A.]	239
Federal Bulk Carriers Inc. v. C. Itoh & Co Ltd. and Others (The <i>Federal Bulker</i>)	[C.A.]	103
<i>Federal Bulker</i> , The	[C.A.]	103
Firma C-Trade S.A. v. Newcastle Protection and Indemnity Association (The <i>Fanti</i>)	[C.A.]	239
Food Corporation of India:—Mosvolds Rederi AS v.	[Q.B. (Com. Ct.)]	131
Forsikringsaktieselskapet Vesta v. J. N. E. Butcher, Bain Dawes Ltd. and The Aquacultural Insurance Service Ltd. .	[H.L.]	331
<i>Freccia Del Nord</i> and <i>Nord Sea</i> , The	[Q.B. (Adm. Ct.)]	388
<i>Free Wave</i> , <i>Proteus</i> , <i>Dinara</i> and <i>General Capinpin</i> , The	[C.A.]	232
Furness Withy (Australia) Pty. Ltd. v. Metal Distributors (U.K.) Ltd. (The <i>Amazonia</i>)	[Q.B. (Com. Ct.)]	403

CONTENTS—continued

	COURT	PAGE
Garden Neptune Shipping Ltd. and Others v. Occidental Worldwide Investment Corporation and Concord Petro- leum Corporation	[Q.B.]	305
Gatewhite Ltd. and Another v. Iberia Lineas Aereas De Espana Sociedad	[Q.B. (Com. Ct.)]	160
Gatoil (USA) Inc.:—Sohio Supply Co. v.	[C.A.]	588
General Accident Fire and Life Assurance Corporation Plc.:— C. T. N. Cash and Carry Ltd. v.	[Q.B.]	299
<i>General Capinpin, Proteus, Free Wave and Dinara, The</i>	[C.A.]	232
<i>George S., The</i>	[C.A.]	369
<i>Glucometer II and St. Michael, The</i>	[Q.B. (Adm. Ct.)]	54
Grant Trading Inc.:—Societe Anonyme Des Minerais v.	[C.A.]	349
Hall Russell and Co. Ltd.:—Esso Petroleum Co. Ltd. v.	[H.L.]	8
Hayler, (Terence Trevor) v. D. G. Chapman	[C.A.]	490
<i>Hoegh Rover and Arras, The</i>	[Q.B. (Com. Ct.)]	131
Holmes (Keiko) v. Bangladesh Biman Corporation	[H.L.]	444
Home and Overseas Insurance Co. Ltd. v. Mentor Insurance Co. (UK) Ltd.	[C.A.]	473
Iberia Lineas Aereas De Espana Sociedad:—Gatewhite Ltd. and Another v.	[Q.B. (Com. Ct.)]	160
<i>Inez Eglantine and Credo, The</i>	[Q.B. (Adm. Ct.)]	593
<i>Inowroclaw, The</i>	[Q.B. (Adm. Ct.)]	498
Insurance Corporation of Ireland Ltd. and International Com- mercial Bank PLC:—Meadows Indemnity Co. Ltd. v.	[Q.B. (Com. Ct.)]	181
International Commercial Bank PLC and Insurance Corpora- tion of Ireland:—Meadows Indemnity Co. Ltd. v.	[Q.B. (Com. Ct.)]	181
International Transport Workers Federation:—Dimskal Ship- ping Co. S.A. v.	[Q.B. (Com. Ct.)]	166
Inversiones Manria S.A. v. Sphere Drake Insurance Co. Plc., Malvern Insurance Co. Ltd. and Niagara Fire Insurance Co. Inc. (The <i>Dora</i>)	[Q.B. (Com. Ct.)]	69
Iron Trades Mutual Insurance Co. Ltd.:—M/S Aswan Engin- eering Establishment Co. Ltd.	[Q.B. (Com. Ct.)]	289
Itoh (C.) & Co. Ltd. and Others:—Federal Bulk Carriers Inc. v.	[C.A.]	103
Jebsens (UK) Ltd. and Others:—President of India v.	[C.A.]	232
Jersey (State of) Telecommunications Board, and Chloride Industrial Batteries Ltd. v. F. & W. Freight Ltd.	[Q.B.]	410
<i>Kanchenjunga, The</i>	[C.A.]	354
<i>Kelaniya, The</i>	[C.A.]	30
Kleinwort Benson Ltd. v. Malaysia Mining Corporation Berhad <i>Kyzikos, The</i>	[C.A.]	556
	[H.L.]	1
Lauritzen (J.) A.S. v. Wijsmuller B. V. (The <i>Super Servant Two</i>)	[Q.B. (Com. Ct.)]	148
Libyan Arab Foreign Bank v. Manufacturers Hanover Trust Co. (No. 2)	[Q.B. (Com. Ct.)]	608
<i>Magnum, The (ex Tarraco Augusta)</i>	[C.A.]	47
Malaysia Mining Corporation Berhad:—Kleinwort Benson Ltd. v.	[C.A.]	556
Malvern Insurance Co. Ltd., Niagara Fire Insurance Co. Inc. and Sphere Drake Insurance Co. Plc.:—Inversiones Man- ria S.A. v.	[Q.B. (Com. Ct.)]	69

CONTENTS—*continued*

	COURT	PAGE
Mansell (John), R. John Ralphs and Ralphs and Mansell and Assicurazioni Generali S.p.A.:—Normid Housing Association Ltd. v.	[C.A.]	265
Manufacturers Hanover Trust Co. (No. 2):—Libyan Arab Foreign Bank v.	[Q.B. (Com. Ct.)]	608
Meadows Indemnity Co. Ltd. v. Insurance Corporation of Ireland Ltd. and International Commercial Bank PLC	[Q.B. (Com. Ct.)]	181
Mentor Insurance Co. (UK) Ltd.:—Home and Overseas Insurance Co. Ltd. v.	[C.A.]	473
Metal Distributors (U.K.) Ltd.:—Furness Withy (Australia) Pty. Ltd. v.	[Q.B. (Com. Ct.)]	403
Metallgesellschaft Corporation:—SIB International S.R.L. v. ..	[C.A.]	361
Mosvolds Rederi AS v. Food Corporation of India (The <i>Arras</i> and <i>Hoegh Rover</i>)	[Q.B. (Com. Ct.)]	131
Motor Oil Hellas (Corinth) Refineries S.A. v. Shipping Corporation of India (The <i>Kanchenjunga</i>)	[C.A.]	354
M/S Aswan Engineering Establishment Co. Ltd. v. Iron Trades Mutual Insurance Co. Ltd.	[Q.B. (Com. Ct.)]	289
Mutualidad de Seguros del Instituto Nacional de Industria:—Seashell Shipping Corporation v.	[C.A.]	47
<i>Nadezhda Krupskaya</i> , The	[Aust.]	518
Newcastle Protection and Indemnity Association:—Firma C-Trade S.A. v.	[C.A.]	239
New Hope Collieries Pty Ltd.:—The Queensland Electricity Generating Board v.	[P.C.]	205
Niagara Fire Insurance Co. Inc., Malvern Insurance Co. Ltd. and Sphere Drake Insurance Co. Plc.:—Inversiones Manria S.A. v.	[Q.B. (Com. Ct.)]	69
<i>Noel Bay</i> , The	[C.A.]	361
<i>Nord Sea</i> and <i>Freccia del Nord</i> , The	[Q.B. (Adm. Ct.)]	388
Normid Housing Association Ltd. v. R. John Ralphs, John S. Mansell, Ralphs and Mansell and Assicurazioni Generali S.p.A.	[C.A.]	265
Nova Petroleum International Establishment v. Tricon Trading Ltd.	[Q.B. (Com. Ct.)]	312
Occidental Worldwide Investment Corporation and Concord Petroleum Corporation:—Garden Neptune Shipping Ltd. and Others v.	[Q.B.]	305
<i>Oden</i> and <i>Pulkovo</i> , The	[Q.B. (Adm. Ct.)]	280
<i>Padre Island</i> , (No. 2) The	[C.A.]	239
Pan Atlantic Insurance Co. Ltd. and Republic Insurance Co. v. Pine Top Insurance Co. Ltd.	[C.A.]	568
Panous Shipping Co. Inc.:—Unifert International SAL v.	[Q.B. (Com. Ct.)]	603
Parpada Shipping Co. Ltd.:—Amoco Oil Co. v.	[C.A.]	369
Pine Top Insurance Co. Ltd.:—Pan Atlantic Insurance Co. Ltd. and Republic Insurance Co. v.	[C.A.]	568
Polish Steamship Co. v. A. J. Williams Fuels (Overseas Sales) Ltd. (The <i>Suwalki</i>)	[Q.B. (Com. Ct.)]	511
<i>Powstaniec Wielkopolski</i> , The	[Q.B. (Adm. Ct.)]	58
President of India v. Jebsens (UK) Ltd. and Others (The <i>General Capinpin</i> , <i>Proteus</i> , <i>Free Wave</i> and <i>Dinara</i>)	[C.A.]	232
<i>Proteus</i> , <i>Dinara</i> , <i>Free Wave</i> and <i>General Capinpin</i> , The	[C.A.]	232
Prudential Assurance Co. Ltd.:—Dino Services Ltd. v.	[C.A.]	379

CONTENTS—continued

	COURT	PAGE
<i>Pulkovo and Oden, The</i>	[Q.B. (Adm. Ct.)]	280
Qantas Airways Ltd.:—S.S. Pharmaceutical Co. Ltd. and Another v.	[Aust. Ct.]	319
Queensland Electricity Generating Board (The) v. New Hope Collieries Pty Ltd.	[P.C.]	205
Republic Insurance Co. and Pan Atlantic Insurance Co. Ltd. v. Pine Top Insurance Co. Ltd.	[C.A.]	568
Republic of Haiti and Others v. Jean-Claude Duvalier and Others	[C.A.]	111
Ralphs (R. John), John S. Mansell, Ralphs and Mansell and Assicurazioni Generali S.p.A.:—Normid Housing Association Ltd.	[C.A.]	265
Rich, Marc & Co. A.G. v. Societa Italiana Impianti P.A. (The <i>Atlantic Emperor</i>)	[C.A.]	548
Romanian Bank for Foreign Trade:—Attock Cement Co. Ltd. v.	[C.A.]	572
SIB International S.R.L. v. Metallgesellschaft Corporation (The <i>Noel Bay</i>)	[C.A.]	361
S.S. Pharmaceutical Co. Ltd. and Another v. Qantas Airways Ltd.	[Aust. Ct.]	319
<i>St. Michael and Glucometer II, The</i>	[Q.B. (Adm. Ct.)]	54
Seacrystal Shipping Ltd. v. Bulk Transport Group Shipping Co. Ltd. (The <i>Kyzikos</i>)	[H.L.]	1
Seashell Shipping Corporation v. Mutualidad de Seguros del Instituto Nacional de Industria (The <i>Magnum ex Tarraco Augusta</i>)	[C.A.]	47
Seaworld Ocean Line Co. S.A. v. Catseye Maritime Co. Ltd. (The <i>Kelaniya</i>)	[C.A.]	30
Scottish Boatowners Mutual Insurance Association:—A. P. Stephen v.	[H.L.]	535
Shipping Corporation of India:—Motor Oil Hellas (Corinth) Refineries S.A. v.	[C.A.]	354
Societa Italiana Impianti P.A.:—Marc Rich & Co. A.G. v.	[C.A.]	548
Societe Anonyme Marocaine de L'Industrie et du Raffinage:—Boukadoura Maritime Corporation v.	[Q.B. (Com. Ct.)]	393
Societe Anonyme Des Minerais v. Grant Trading Inc. (The <i>Ert Stefanie</i>)	[C.A.]	349
Socony Mobil Oil Co. Inc. and Others v. West England Ship Owners Mutual Insurance Association Ltd. (The <i>Padre Island</i>) (No. 2)	[C.A.]	239
Sohio Supply Co. v. Gatoil (USA) Inc.	[C.A.]	588
Sparta Navigation Co. v. Transocean America Inc. (The <i>Stephanos</i>)	[Q.B. (Com. Ct.)]	506
Sphere Drake Insurance Co. Plc., Malvern Insurance Co. Ltd. and Niagara Fire Insurance Co. Inc.:—Inversiones Manria S.A. v.	[Q.B. (Com. Ct.)]	69
<i>Stephanos, The</i>	[Q.B. (Com. Ct.)]	506
Stephen (A. P.) v. Scottish Boatowners Mutual Insurance Association (The <i>Talisman</i>)	[H.L.]	535
Suhail and Saud Bahwan Building Materials LLC:—Vantage Navigation Corporation (The <i>Alev</i>) v.	[Q.B. (Com. Ct.)]	138
<i>Suwalki, The</i>	[Q.B. (Com. Ct.)]	511
<i>Super Servant Two, The</i>	[Q.B. (Com. Ct.)]	148

CONTENTS—continued

	COURT	PAGE
<i>Talisman</i> , The	[H.L.]	535
Togo Amusements Corporation Sarl and Another v. Estonian Shipping Co. (The <i>Vasiliy Shelgunov</i>)	[C.A.]	542
Transocean America Inc.:—Sparta Navigation Co. v.	[Q.B. (Com. Ct.)]	506
Transol Oleiprodukten Nederland B. V.:—Transpetrol Ltd. v. .	[Q.B. (Com. Ct.)]	309
Transpetrol Ltd. v. Ekali Shipping Co. Ltd. (The <i>Aghia Marina</i>)	[Q.B. (Com. Ct.)]	62
Transpetrol Ltd. v. Transol Olieprodukten Nederland B.V.	[Q.B. (Com. Ct.)]	309
Tricon Trading Ltd.:—Nova Petroleum International Establishment v.	[Q.B. (Com. Ct.)]	312
Unifert International SAL v. Panous Shipping Co. Inc. (The <i>Virginia M</i>)	[Q.B. (Com. Ct.)]	603
Vantage Navigation Corporation v. Suhail and Saud Bahwan Building Materials LLC (The <i>Alev</i>)	[Q.B. (Com. Ct.)]	138
<i>Vasiliy Shelgunov</i> , The	[C.A.]	542
<i>Virginia M</i> , The	[Q.B. (Com. Ct.)]	603
Vitol S.A. v. Esso Australia Ltd. (The <i>Wise</i>)	[Q.B. (Com. Ct.)]	96
Weldon (Anthony Henry David) and Others:—Derby & Co. Ltd. and Others v.	[C.A.]	122
West of England Ship Owners Mutual Insurance Association Ltd.:—Socony Mobil Oil Co. Inc. and Others v.	[C.A.]	239
Westzucker G.m.b.H. (No. 3):—Bremer Handelsgesellschaft m.b.H. v.	[C.A.]	582
Westzucker G.m.b.H. (No. 3):—Bremer Handelsgesellschaft m.b.H. v.	[Q.B. (Com. Ct.)]	198
Wijismuller B.V.:—J. Lauritzen A.S. v.	[Q.B. (Com. Ct.)]	148
Williams, (A. J.) Fuels (Overseas Sales) Ltd.:—Polish Steamship Co. v.	[Q.B. (Com. Ct.)]	511
<i>Wise</i> , The	[Q.B. (Com. Ct.)]	96
Xenofon Maritime S.A. and Continental Illinois National Bank & Trust Co. of Chicago v. Allied Assurance Co. Ltd.	[C.A.]	33
<i>Zirje</i> , The	[Q.B. (Adm. Ct.)]	493

LLOYD'S LAW REPORTS

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

PART 1

The "Kyzikos"

[1989] VOL. 1

HOUSE OF LORDS

June 23, 1988

SEACRYSTAL SHIPPING LTD.
v.
BULK TRANSPORT GROUP SHIPPING
CO. LTD.
(THE "KYZIKOS")

Before Lord BRIDGE OF HARWICH,
Lord BRANDON OF OAKBROOK,
Lord TEMPLEMAN, Lord ACKNER and Lord
OLIVER OF AYLMEYTON

Charter-party (Voyage) — Demurrage — Commencement of laytime — Vessel tendered notice of readiness — Discharging berth available but vessel unable to proceed to it because of fog — Whether laytime commenced when notice of readiness given — Effect of "WIBON" provision — Whether owners entitled to rely on words "always accessible berth(s)".

By a charter-party dated Oct. 26, 1984 the owners' vessel *Kyzikos* was fixed to load a cargo of steel and/or steel products in Italy for discharge in Houston.

The charter which was on the Gencon form provided inter alia:

Discharging port or place — 1/2 safe always afloat, always accessible berth(s) each port . . .

5 Loading . . . cargoes are to be . . . discharged free of expense and risk for Owners.

Time to commence at 2 p.m. if notice of readiness . . . is given before Noon and at 8 a.m. next working day if notice given during office hours after noon . . . Time lost in waiting for berth to count as loading time . . .

Time to count as per Clause 5 Wipon/Wibon/Wipon/Wcon . . .

Clause 6 provided inter alia that time lost in waiting for a berth to count as discharging time.

Kyzikos arrived within the discharging port, Houston, at 06 45 hours on Dec. 17, 1984. Notice of readiness was tendered between 06 45 hours and

noon. At all material times the berth to which the vessel was destined, and at which she ultimately discharged, was available. The vessel was however unable to proceed immediately to it because of fog which resulted in the pilot station being closed. The vessel arrived at her berth at 14 50 hours on Dec. 20 and discharging was completed at 17 00 hours on Jan. 11, 1985.

The owners claimed that laytime commenced at 14 00 hours on Dec. 17 and the vessel was on demurrage for a total of 14 days nine hours and 16 minutes. The charterers denied liability and the dispute was referred to arbitration.

The arbitrator concluded that the reference in cl. 5 to "wibon" had the effect of making the charter into a port charter and he held that the owners' claim succeeded in full.

The charterers appealed. The owners were given leave to contend that the award should be upheld on the alternative ground that in breach of the charter the berth nominated by the charterers was not always accessible and that the charterers were liable in damages for detention in a like sum to demurrage.

—*Held*, by Q.B. (Com. Ct.) (WEBSTER, J.), that (1) the "wibon" provision did not override the primary obligations created by the charter or those obligations as modified by the express exceptions and it did not affect, in principle as distinct from detail, the question where the risk was to fall in the event of delay affecting the vessel; the arbitrator was wrong in his conclusion and laytime did not commence until the vessel arrived at the berth; the charterers were under no outstanding liability to the owners;

(2) even if the "wibon" provision had the effect of converting a berth charter to a port charter, the vessel was not an arrived ship at the port because she was not at that time at the immediate and effective disposition of the charterers even though she was not being used for the owners' purposes;

(3) the arbitrator's award must be set aside unless the owners could successfully rely on the words "always accessible berth(s) each port";

(4) the word "accessible" meant "capable of being approached" in the sense of having an unobstructed way or means of approach and the expression "always accessible" was an adjectival

description, descriptive of the berth, and meant only that the berth was capable of being approached;

(5) the owners could not establish that the charterers were in breach of their absolute obligation to nominate a berth which was always accessible; the award would be set aside.

On appeal by the owners:

—*Held*, by C.A. (LLOYD and GLIDEWELL, L.J.J. and Sir JOHN MEGAW), that (1) the reason why the provision "whether in berth or not" was originally included in berth charters was to cater for the case where the port was congested and a berth unavailable; but there was nothing in the wording which limited its operation to such a case; the wording was quite general and notice of readiness could be given whether in berth or not so that such notice could be given before the vessel had reached its destination; if a limit was to be placed it was better that the limit be by reference to the place at which notice of readiness could be given rather than the reason why the vessel was unable to proceed to her berth;

(2) the provision "whether in berth or not" enabled a valid notice of readiness to be given once the vessel had arrived in port even though the reason why she was prevented from proceeding further was not the unavailability of a berth but bad weather;

(3) the effect of the "whether in berth or not" clause was to turn a berth charter into a port charter so that time started to run when the vessel was waiting in the named port of destination to proceed to berth; she was in a fit state to proceed to her berth and discharge; thus the owners were entitled to give notice of readiness provided that she was at the immediate and effective disposition of the charterer;

(4) it was conceded by the charterers that a vessel could be at the immediate and effective disposition of the charterers despite a temporary obstruction in the fairway preventing her getting to her berth when vacant; there was no difference in principle between a temporary obstruction of the fairway and the temporary closing down of the pilot station by reason of fog; the Reid test was convenient and practical for ascertaining where the place was in determining whether a vessel had arrived or not; it would be much less convenient and practical if in addition to ascertaining where that place was one had also to enquire as to the circumstances prevailing at the moment when the vessel arrived at that place; the appeal would be allowed.

On appeal by the charterers:

—*Held*, by H.L. (Lord BRIDGE OF HARWICH, Lord BRANDON OF OAKBROOK, Lord TEMPLEMAN, Lord ACKNER and Lord OLIVER OF AYLERTON) that (1) the phrase "whether in berth or not" had over a long period of time been treated as shorthand for what would be "whether in berth (a berth being available) or not in berth (a berth not being available"; and the context in which the acronym

"wibon" appeared in the charter supported that view (*see* p. 6, cols. 1 and 2);

(2) although the phrase "in berth or not" did not of itself indicate that being in berth or not was related to the availability or unavailability of a berth it was not possible, when interpreting a phrase which had been regularly included in berth charter-parties over a long period, to disregard established authority as to the purpose intended by it; the purpose of the phrase was to deal with the problem of a ship under a berth charter-party arriving at her port of destination and finding no berth available for her; there was no authority to suggest that the phrase was intended to deal with the problem of a ship under a berth charter-party arriving at a port where a berth was available for her but being prevented by bad weather from proceeding to it (*see* p. 7, col. 2);

—*Northfield Steamship Co. v. Compagnie L'Union des Gaz*, [1912] 1 K.B. 434, applied

(3) the effect of the phrase was to convert a berth charter-party into a port charter-party but only in relation to a case where a berth was not available for the ship on her arrival; there was no good reason for applying that effect to a wholly different kind of case where a berth was available for the ship on her arrival but she was prevented by bad weather from proceeding to it (*see* p. 7, col. 2);

—*The Johanna Oldendorff*, [1973] 2 Lloyd's Rep. 285, considered

(4) it was desirable that in contracts containing expressions commonly in use there should be certainty of interpretation; the decision that the phrase "whether in berth or not" only took effect when a berth was not available did not provide any less certainty than a decision that it also took effect when a berth was available but was unreachable by reason of bad weather; (*see* p. 7, col. 2; p. 8, col. 1);

(5) the phrase "whether in berth or not" should be interpreted as applying only to cases where a berth was not available and not to cases where a berth was available but unreachable by reason of bad weather; the appeal would be allowed (*see* p. 3, col. 1; p. 8, col. 1).

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

Aello, The (H.L.) [1960] 1 Lloyd's Rep. 623; [1961] A.C. 135;

Federal Commerce and Navigation Co. Ltd. v. Tradax Export S.A. (The Maratha Envoy), (H.L.) [1977] 2 Lloyd's Rep. 301; [1978] A.C. 1;

Northfield Steamship Co. v. Compagnie L'Union des Gaz, (C.A.) [1912] 1 K.B. 434;

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

H.L.]

The "Kyzikos"

[Lord BRANDON

A.C. 479; (C.A.) [1972] 2 Lloyd's Rep. 292; [1974] A.C. 479.

This was an appeal by the charterers Bulk Transport Group Shipping Co. Ltd. from the decision of the Court of Appeal ([1987] 2 Lloyd's Rep. 122) allowing the appeal of the owners Seacrystal Shipping Ltd. from the decision of Mr. Justice Webster ([1987] 1 Lloyd's Rep. 48) given in favour of the charterers and holding inter alia that the charterers were not liable to the owners for demurrage.

Mr. Martin Moore-Bick, Q.C. and Mr. Charles Friday (instructed by Messrs. Middleton Potts) for the owners; Mr. Anthony Diamond, Q.C. and Mr. Bernard Eder (instructed by Messrs. Holman Fenwick & Willan) for the charterers.

The further facts are stated in the judgment of Lord Brandon of Oakbrook.

Judgment was reserved.

Thursday Oct. 20, 1988

JUDGMENT

Lord BRIDGE OF HARWICH: My Lords, I have had the advantage of reading in draft the speech of my noble and learned friend, Lord Brandon of Oakbrook. I agree with it and, for the reasons he gives, I would allow the appeal.

Lord BRANDON OF OAKBROOK: My Lords, by a voyage charter-party dated Oct. 26, 1984 the appellants ("the charterers") chartered the m.v. *Kyzikos* ("the ship") owned by the respondents ("the owners") to carry a cargo of steel and/or steel products from Italy to the U.S. Gulf. The ship was ordered to discharge at the port of Houston. She arrived and anchored there at 06 45 on Dec. 17, 1984, and at some time before 12 00 the master gave notice of readiness to discharge. Then, and all material times afterwards, the berth at which the ship was to discharge was available for her use. She was, however, prevented from proceeding to it immediately because of fog, which resulted in the pilot station being closed. Because of this the ship did not arrive in her berth until 14 50 on Dec. 20, 1984.

A dispute arose between the owners and the charterers with regard to the liability of the latter for demurrage at the port of discharge. The owners claimed U.S.\$30,435.72 in respect of a balance of demurrage remaining unpaid. The charterers denied liability. The essential

question governing the validity of the claim was whether time for discharging counted during the period for which the ship was prevented from proceeding to her berth by reason of fog.

The dispute was referred, pursuant to a London arbitration clause contained in the charter-party, to Mr. Bruce Harris as sole arbitrator. By a reasoned award dated Nov. 26, 1985 the arbitrator decided that the owners' claim succeeded in full. The charterers obtained leave to appeal against the award and on July 30, 1986 Mr. Justice Webster in the Commercial Court gave a reserved judgment [1987] 1 Lloyd's Rep. 48 allowing the appeal and dismissing the owners' claim. The owners appealed with the leave of Mr. Justice Webster to the Court of Appeal (Lloyd and Glidewell, L.J.J. and Sir John Megaw). That Court on May 15, 1987 gave reserved judgments [1987] 2 Lloyd's Rep. 122; [1987] 1 W.L.R. 1565 allowing the appeal and restoring the arbitrator's award. The charterers now bring this further appeal against the decision of the Court of Appeal by leave of your Lordships' House.

The charter-party was on the Gencon (Box Layout) 1974 printed form, which contains 21 boxes, each with a printed heading, followed by a series of printed clauses. Typed entries were made in the boxes and typed amendments were made to a number of the printed clauses. A large number of typed clauses were also added by the way of rider. The material provisions, with typed entries and typed amendments indicated by underlining, were as follows:

Box 11. Discharging port or place (Cl. 1)
1/2 safe always afloat, always accessible
berth(s) each port — 1/2 safe port(s) U.S.
Gulf excluded Brownsville and no port North
of Baton Rouge.

Box 15. Laytime allowed for loading (Cl. 5)
See clause 17

Box 17. Laytime allowed for discharging (Cl. 6)
See clause 17

Box 18. Demurrage rate (load and disch) (Cl. 7)
USD. 3,000, — per day/pro rata . . .

Clause 1. . . the vessel shall proceed to the discharging port or place stated in Box 11 or so near thereto as she may safely get . . .

Clause 5. Loading . . . Time to commence at 2 p.m. if notice of readiness to load is given before noon and at 8 a.m. next working day if notice given during office hours after noon . . . Time lost in waiting for berth to count as loading time. Time to count as per

LORD BRANDON]

The "Kyzikos"

[H.L.]

Clause 5 Wipon/Wibon/Wifpon/Wccon and master to have the right to tender notice of readiness by cable, both in the loading and discharging port(s).

Clause 6. Discharging Cargo to be received by merchants . . . and to be discharged in the number of running working days stated in Box 17. Time to commence at 2 p.m. if notice of readiness to discharge is given before noon and 8 a.m. next working day if notice given during office hours after noon. Time lost in waiting for berth to count as discharging time.

Clause 7. Demurrage at the rate stated in Box 18 per day or pro rata for any part of a day to be allowed at ports of loading and discharging.

Clause 17: . . . The cargo to be loaded . . . and discharged . . . within 18 total weather working days of 24 consecutive hours, Saturdays/Sundays/Holidays excepted, unless used, in which case actual time used to count half . . .

The acronyms used in cl. 5 have the following meanings: "wipon" — whether in port or not, "wibon" — whether in berth or not, "wifpon" — whether in free pratique or not, "wccon" — whether cleared customs or not. Clause 17 is one of the additional typed clauses referred to in box 21.

Much of the argument in this case has revolved round the difference between two kinds of voyage charter-party, a port charter-party on the one hand and a berth charter-party on the other. The characteristics of a port charter-party are these. First, the contractual destination of the chartered ship is a named port. Secondly, the ship, in order to qualify as having arrived at the port, and therefore entitled to give notice of readiness to discharge, must satisfy two conditions. The first condition is that, if she cannot immediately proceed to a berth, she has reached a position within the port where waiting ships usually lie. The second condition is that she is at the immediate and effective disposition of the charterers. By contrast, the characteristics of a berth charter-party are these. First, the contractual destination of the chartered ship is a berth designated by the charterers within a named port. Secondly, the ship, in order to qualify as an arrived ship, and therefore entitled to give notice of readiness to discharge, must (unless the charter-party otherwise provides) have reached the berth and be ready to begin discharging.

The basis of the arbitrator's decision in the

present case is to be found in par. 7 of his reasons where he said:

Box 11, as completed, appeared to make this a berth charter . . . But the point is of no significance since, on well established authority, the reference in clause 5 to "wibon" (whether in berth or not) has the effect of making the charter into a port charter.

It is common ground that the charter-party here concerned is, as the arbitrator said that it appeared to be, a berth and not a port charter-party. With regard to the "well established authority" referred to by the arbitrator, it will be necessary later to examine what exactly was decided by that authority, and whether it supports the conclusion which he reached on the basis of it.

It was no doubt because the arbitrator expressed the ground of his decision in the way stated above, and also because the case was argued before him on the basis that the arbitrator had correctly identified the essential question for decision, that Mr. Justice Webster, when he gave the owners leave to appeal from his decision, formulated the question of law for decision by the Court of Appeal in the way in which he did. That question, as formulated by him in par. 4 of his order dated July 31, 1986, was —

whether the provision "whether in berth or not" has the effect of converting a berth charter-party into a port charter-party in circumstances where a berth is available for the vessel.

In my view this formulation of the question, while agreeably succinct, and derived, as I have indicated, from authority, tends to telescope the legal issues involved. Lord Justice Lloyd who gave the leading judgment in the Court of Appeal considered [1987] 2 Lloyd's Rep. 122 at p. 123; [1987] 1 W.L.R. 1565 at p. 1568, that the appeal raised, potentially at least, two questions in relation to a voyage charter-party which it was common ground was a berth and not a port charter-party, but contained a provision allowing the ship to give notice of readiness to discharge "whether in berth or not." The first question was whether the ship could give a valid notice of readiness to discharge when, on her arrival in the discharging port, a berth for her was vacant but she was prevented from reaching it by bad weather, in this case fog. The second question, which only arose if the first question was answered in the affirmative, was whether the ship, in the situation postulated, could properly be said to be at the "immediate and effective disposition of the charterers" as

H.L.]

The "Kyzikos"

[Lord BRANDON]

would be required to enable her to qualify as an arrived ship under a port charter-party.

I agree with this analysis and it will be convenient to examine what Lord Justice Lloyd described as the first question first. In doing so I shall treat the amendment to cl. 5 of the charter-party (loading) as applying also to cl. 6 (discharging). That it was intended to do so appears to have been accepted by both sides at the arbitration. The contrary view seems to have been raised, to some extent at least, before Mr. Justice Webster who was not impressed by it. Before the Court of Appeal and in your Lordships' House the matter was common ground.

Two views have been advanced, at each stage of the proceedings, with regard to the meaning of the phrase "whether in berth or not" in a berth charter-party. One view, put forward by the charterers and accepted by Mr. Justice Webster is that the phrase covers cases where the reason for the ship not being in berth is that no berth is available, but does not cover cases where a berth is available and the only reason why the ship cannot proceed to it is that she is prevented by bad weather such as fog. The other view, put forward by the owners and accepted by the arbitrator and the Court of Appeal, is that the phrase covers cases where a ship is unable to proceed to a berth either because none is available or because, although a berth is available, the ship is prevented by bad weather such as fog from proceeding to it.

The proposition that the inclusion in a berth charter-party of the phrase "whether in berth or not" has the effect of converting it into a port charter-party appears to have had its origin in the judgment of Lord Justice Roskill in the Court of Appeal in *E. L. Oldendorff & Co. G.m.b.H. v. Tradax Export S.A. (The Johanna Oldendorff)*, [1973] 2 Lloyd's Rep. 285; [1974] A.C. 479. That case was concerned with the question of what conditions need to be satisfied to enable a ship to qualify as an arrived ship under a port charter-party when no berth is available for her in the discharging port. The decision of the House on that question was of the greatest importance because by it the House altered the law as it had earlier declared it to be in *The Aello*, [1960] 1 Lloyd's Rep. 623; [1961] A.C. 135. For present purposes, however, the only significance of the case lies in certain observations made by Lord Justice Roskill in his judgment in the Court of Appeal. He said [1972] 2 Lloyd's Rep. 292 at p. 312; [1974] A.C. 479 at p. 515:

The phrase "whether in berth or not" was designed to convert a berth charter-party into

a port charter-party and to ensure that under a berth charter-party notice of readiness could be given as soon as the ship had arrived within the commercial area of the port concerned so that laytime would start to run on its expiry. It has no proper place in a port charter-party.

It has since been said that there was a difference of view between Lord Justice Roskill and Lord Justice Buckley with regard to that point. However, for the reasons given by Lord Justice Lloyd in the present case [1987] 2 Lloyd's Rep. 122 at pp. 125-126; [1987] 1 W.L.R. 1565 at pp. 1571-1572, I agree that no real difference can be established.

In evaluating the observations of Lord Justice Roskill cited above it is essential to appreciate that he made them, and made them only, with reference to a case where no berth was available for the ship concerned on her arrival at the port of discharge. It follows that, when he said that the phrase "whether in berth or not" was designed to convert a berth charter-party into a port charter-party, he was saying it only in relation to a case where no berth was available for the ship on arrival. He had no reason to consider whether the words which he used would have been appropriate in a case where a berth was available for the ship on arrival but she was prevented by bad weather such as fog from proceeding to it. I do not, therefore, consider that his observations are of any assistance in answering the first question in the present case.

In order to answer that question it is, in my view, necessary to have regard to two considerations. The first consideration is the meaning which has been given to the phrase "whether in berth or not" in the authorities relating to it. The second consideration is the context in which the acronym "wibon" is to be found in the charter-party which your Lordships are here concerned.

So far as the authorities are concerned, they present two aspects, one positive and the other negative. The positive aspect of the authorities is that in them the phrase "whether in berth or not", when used in a berth charter-party, has uniformly over a long period been interpreted as relating to the availability or unavailability of a berth. In other words the phrase has been interpreted as dealing with the problem of congestion in ports, and putting on the charterers rather than the owners the risk of delay caused by such congestion.

In *Northfield Steamship Co. v. Compagnie L'Union des Gaz*, [1912] 1 K.B. 434 a ship was chartered under what would today be called a