

LLOYD'S LAW REPORTS

Editor:

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

1983
Volume 1

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

© LLOYD'S OF LONDON PRESS LTD. 1983

CASES JUDICIALLY CONSIDERED

	PAGE
<i>Aegnoussiotis, The</i> — <i>Applied</i>	[1977] 1 Lloyd's Rep. 268 302
<i>Afovos, The</i> — <i>Considered</i>	[1980] 2 Lloyd's Rep. 469 146
Ailsa Craig Fishing Co. Ltd. v. Malvern Fishing Co. Ltd. and Securicor Transport (Scotland) Ltd. — <i>Applied</i>	[1983] 1 Lloyd's Rep. 183 168
Amalgamated Investment Property Co. Ltd. v. Texas Commercial International Bank Ltd. — <i>Considered</i>	[1982] 1 Lloyd's Rep. 27 188
Andre & Cie S.A. v. Tradax Export S.A. — <i>Not followed</i>	[1981] 2 Lloyd's Rep. 352 327
<i>Antama, The</i> — <i>Applied</i>	[1982] 2 Lloyd's Rep. 112 154
<i>Argonaut, The</i> — <i>Applied</i>	[1982] 2 Lloyd's Rep. 214 29
A/S Rendal v. Arcos — <i>Applied</i>	(1948) 58 Ll.L.Rep. 287 514
Astro Valiente Compania Naviera S.A. v. The Government of Pakistan, Ministry of Food and Agriculture (No. 2) — <i>Not followed</i>	[1982] 1 Lloyd's Rep. 286 416
Bernstein v. Liddiate Textiles Ltd. — <i>Considered</i>	June 1962, unreported 448
Bollard v. Volkswagenwerke A.G. — <i>Applied</i>	313 Fed. Rep. 126 (1979)..... 320
Bragg v. Oceanus Mutual Underwriting Association (Bermuda) Ltd. — <i>Considered</i>	[1982] 2 Lloyd's Rep. 132 462
Bremer Oeltransport G.m.b.H. v. Drewry — <i>Applied</i>	(1933) 45 Ll.L.Rep. 133 637
Bremer Vulkan Schiffbau und Maschinenfabrik v. South India Shipping Corporation — <i>Applied</i>	[1981] 1 Lloyd's Rep. 253 29, 103
Cantiere Navale Triestina v. Handelsvertretung der Russe Soviet Republik Naphtha Export — <i>Considered</i>	(1925) 21 Ll.L.Rep. 204 648
City & Westminster Properties (1934) Ltd. v. Mudd — <i>Considered</i>	[1959] 1 Ch. 129 188
Cremer (Peter) v. Granaria B.V. — <i>Applied</i>	[1981] 2 Lloyd's Rep. 583 434
Croasdell and Cammell Laird & Co. Ltd., In re — <i>Applied</i>	[1906] 2 K.B. 569 472
Dunlop Pneumatic Power Co. Ltd. v. New Garage Co. Ltd. — <i>Considered</i>	[1913] A.C. 79 448
<i>Evia, The</i> — <i>Applied</i>	[1982] 2 Lloyd's Rep. 307 387
Henry v. Geoprosco International Ltd. — <i>Not followed</i>	[1975] 2 Lloyd's Rep. 148 560
Hodge v. Higgins (The <i>Harcourt</i>) — <i>Distinguished</i>	[1980] 2 Lloyd's Rep. 589 382
<i>Homewood, The</i> — <i>Applied</i>	(1928) 31 Ll.L. Rep. 336 94
Inman Steamship Co. v. Bischoff — <i>Applied</i>	(1882) 7 App. Cas. 670 302
Ireland v. Livingstone — <i>Considered</i>	(1872) L.R. 5 H.L. 395 611
<i>Kerman, The</i> — <i>Considered</i>	[1982] 1 Lloyd's Rep. 62 655
MacShannon v. Rockwareglass Ltd. — <i>Applied</i>	[1978] A.C. 795 1
<i>Mandarin Star, The</i> — <i>Overruled</i>	[1969] 1 Lloyd's Rep. 293 342
<i>Minehaha, The</i> — <i>Applied</i>	Lush 335..... 51

CASES JUDICIALLY CONSIDERED—*continued*

PAGE

<i>Nanfri, The</i> — <i>Considered</i>	[1978] 2 Lloyd's Rep. 201	302
<i>Nema, The</i> — <i>Considered</i>	[1981] 2 Lloyd's Rep. 239	51, 655
<i>Ocean Grandeur, The</i> — <i>Distinguished</i>	[1972] 127 C.L.R. 312	94
<i>Oltenia, The</i> — <i>Distinguished</i>	[1982] 2 Lloyd's Rep. 99	514
<i>Payzu Ltd. v. Saunders</i> — <i>Considered</i>	[1919] 2 K.B. 581	605
<i>Phelps, James & Co. v. Hill</i> — <i>Applied</i>	[1891] 1 Q.B. 605	498
<i>Photo Production Ltd. v. Securicor Transport Ltd.</i> — <i>Applied</i>	[1980] 1 Lloyd's Rep. 545	168
<i>Russell (John) & Co. Ltd. v. Cayzer Irvine & Co. Ltd.</i> — <i>Applied</i>	[1916] A.C. 298	361
<i>Savvas, The</i> — <i>Applied</i>	[1981] 1 Lloyd's Rep. 155	409
<i>Tatton (William) & Co. Ltd. v. Ferrymasters Ltd.</i> — <i>Applied</i>	[1974] 1 Lloyd's Rep. 293	61
<i>Tehno Impex v. Gebr. Van Weelde Scheepvaartkantoor B.V.</i> — <i>Applied</i>	[1981] 1 Lloyd's Rep. 587	37
<i>Thomson (D.C.) & Co. Ltd. v. Deakin</i> — <i>Applied</i>	[1952] 1 Ch. 646	154
<i>Tropwind, The</i> — <i>Considered and applied</i>	[1977] 1 Lloyd's Rep. 392	127
<i>Yperregia, The</i> — <i>Distinguished</i>	[1977] 1 Lloyd's Rep. 29	89

STATUTES CONSIDERED

	PAGE
UNITED KINGDOM—	
ARBITRATION ACT, 1950	
s. 10	424
s. 22	472
s. 27	514
ARBITRATION ACT, 1975	
s. 1	416, 596
CARRIAGE OF GOODS BY SEA ACT, 1971	1
EMPLOYMENT ACT, 1980	
s. 17	134
LIMITATION ACT, 1939	
s. 2 (1) (c)	596
LLOYD'S ACT, 1871	472
s. 20	51
MARINE INSURANCE ACT, 1906	
s. 55 (2) (c)	122
MERCHANT SHIPPING ACT, 1970	
s. 27	382
MISREPRESENTATION ACT, 1967	
s. 2 (1), (2)	431
PILOTAGE ACT, 1913	
s. 11	382
SALE OF GOODS ACT, 1893	
s. 30 (1), (3)	622
SALE OF GOODS ACT, 1979	
s. 55	168
SUPREME COURT ACT, 1981	
s. 18 (1) (h) (VI)	472
THEFT ACT, 1968	
s. 1	154
TRADE UNION AND LABOUR RELATIONS ACT, 1974	
s. 13	16
UNITED STATES OF AMERICA—	
CARRIAGE OF GOODS BY SEA ACT, 1936	
s. 3 (6)	219
NATIONAL TRAFFIC AND MOTOR VEHICLES SAFETY ACT, 1966	
s. 1399 (c)	320

CONTENTS

**NOTE: These Reports should be cited as
"1983I 1 Lloyd's Rep."**

	COURT	PAGE
Administração Geral do Acucur e do Alcool E.P.:—F. R. Waring (U.K.) Ltd. v.	[Q.B. (Com. Ct.)]	45
Aeco Maritime S.A. and Sotiros Shipping Inc.:—Sameiet Solholt v.	[C.A.]	605
Afovos Shipping Co. S.A. v. R. Pagnan and F. Lli	[H.L.]	335
Afovos, The	[H.L.]	335
Ailsa Craig Fishing Co. Ltd. v. Malvern Fishing Co. Ltd. and Securicor (Scotland) Ltd. (The <i>Strathallan</i>) (Note)	[H.L.]	183
<i>Alaskan Trader</i> , The	[Q.B. (Com. Ct.)]	315
Aliakmon Shipping Co. Ltd.:—Leigh and Sullivan Ltd. v.	[Q.B. (Com. Ct.)]	203
<i>Al Wahab</i> , The	[C.A.]	235
<i>Aliakmon</i> , The	[Q.B. (Com. Ct.)]	203
Ameropa A.G. v. Marcoluna Shipping Corporation S.A. (The <i>Angelina the Great</i>)	[C.A.]	591
Amin Rasheed Shipping Corporation v. Kuwait Insurance Co. (The <i>Al Wahab</i>)	[C.A.]	235
Andre & Cie S.A. v. Tradax Export S.A.	[C.A.]	254
<i>Angelina the Great</i> , The	[C.A.]	591
<i>Apollon</i> , The	[Q.B. (Com. Ct.)]	409
Ardtran International Ltd. and Others:—Worldwide Carriers Ltd. and Another v.	[Q.B. (Com. Ct.)]	61
Astro Exito Navegacion S.A. v. W. T. Hsu (The <i>Messiniaki Tolmi</i>)	[Q.B. (Com. Ct.)]	666
Astro Venturoso Compania Naviera v. Hellenic Shipyards S.A. (The <i>Mariannina</i>)	[C.A.]	12
<i>Athos</i> , The	[C.A.]	127
Atlantic Lines & Navigation Co. Inc. v. Hallam Ltd. (The <i>Lucy</i>)	[Q.B. (Com. Ct.)]	188
Atlantic Maritime Co.:—Polish Steam Ship Co. v.	[Q.B. (Adm. Ct.)]	485
<i>August 8th</i> , The	[P.C.]	351
<i>Balder London</i> (No. 2), The	[Q.B. (Com. Ct.)]	492
Bank Fur Gemeinwirtschaft A.G.:—J. H. Rayner (Mincing Lane) Ltd. v.	[C.A.]	462
Banque de L'Indochine et de Suez S.A. v. J. H. Rayner (Mincing Lane) Ltd.	[C.A.]	228
<i>Benarty</i> , The	[C.A.]	361
Berger & Co. Inc.:—Gill & Duffus S.A. v.	[C.A.]	622
Berliner Motor Corporation and Steiers Lawn & Sports Inc. v. Sun Alliance and London Insurance Ltd.	[Q.B. (Com. Ct.)]	320
BP Tanker Co. Ltd.:—Dow Chemical (Nederland) B.V. v.	[C.A.]	579
Bremer Handelsgesellschaft m.b.H.:—Schleswig-Holsteinische Landwirtschaftliche Hauptgenossenschaft E.G. m.b.H. v.	[Q.B. (Com. Ct.)]	434
Bremer Handelsgesellschaft m.b.H. v. Bunge Corporation	[C.A.]	476
Bremer Handelsgesellschaft m.b.H. v. Continental Grain Co. ...	[C.A. & Q.B. (Com. Ct.)]	269
Bremer Handelsgesellschaft m.b.H. v. Deutsche Conti-Handelsgesellschaft m.b.H.	[Q.B. (Com. Ct.)]	689

CONTENTS—continued

	COURT	PAGE
Bremer Handelsgesellschaft m.b.H. v. Raiffeisen Hauptgenossenschaft E.G.	[Q.B. (Com. Ct.)]	434
Bulk Oil International Ltd.:—Clea Shipping Corporation v.	[Q.B. (Com. Ct.)]	315
Bulk Oil (Zug) A.G. v. Sun International Ltd. and Sun Oil Trading Co.	[Q.B. (Com. Ct.)]	655
Bunge Corporation:—Bremer Handelsgesellschaft m.b.H. v.	[C.A.]	476
Care Shipping Corporation v. Latin American Shipping Corporation (The <i>Cebu</i>)	[Q.B. (Com. Ct.)]	302
<i>Cebu</i> , The	[Q.B. (Com. Ct.)]	302
<i>Chrysalis</i> , The	[Q.B. (Com. Ct.)]	503
Clea Shipping Corporation v. Bulk Oil International Ltd. (The <i>Alaskan Trader</i>)	[Q.B. (Com. Ct.)]	315
Cleobolus Shipping Co. Ltd. v. Intertanker Ltd. (The <i>Cleon</i>)	[C.A. & Q.B. (Com. Ct.)]	586
<i>Cleon</i> , The	[C.A. & Q.B. (Com. Ct.)]	586
Cominos (A. N.), Athos Shipping Co. S.A., Solidor Shipping Co. Ltd. and Horizon Finance Corporation:—Telfair Shipping Corporation v.	[C.A.]	127
Cominter (U.K.) Ltd.:—Hayn Roman & Co. S.A. v.	[Q.B. (Com. Ct.)]	521
Commonwealth Insurance Co. of Vancouver v. Groupe Sprinks S.A., Compagnie Francaise D'Assurances Europeenes, J. H. Minet & Co. Ltd., C. E. Heath & Co. (Marine) Ltd. and Others	[Q.B. (Com. Ct.)]	67
Compagnie Francaise D'Assurances Europeenes, Group Sprinks S.A., J. H. Minet & Co. Ltd., C. E. Heath & Co. (Marine) Ltd. and Others:—Commonwealth Insurance Co. of Vancouver v.	[Q.B. (Com. Ct.)]	67
Compania de Vapores Stelvi S.A.:—Metals and Ores Pte. Ltd. and Another v.	[Q.B. (Com. Ct.)]	530
Compania Naviera General S.A. v. Kerametal Ltd. (The <i>Lorna I</i>)	[C.A.]	373
Congimex Companhia Geral de Comercio Importadora & Exportadora S.A.R.L. v. Tradax Export S.A.	[C.A.]	250
Continental Grain Co.:—Bremer Handelsgesellschaft m.b.H. v....	[C.A. & Q.B. (Com. Ct.)]	269
Cook Industries Inc. v. Tradax Export S.A.	[Q.B. (Com. Ct.)]	327
Cremer (Peter):—European Grain & Shipping Ltd. v.	[Q.B. (Com. Ct.)]	211
C-Trade S.A.:—Uni-Ocean Lines Pte. Ltd. v.	[Q.B. (Com. Ct.)]	387
<i>Daffodil B</i> , The	[Q.B. (Com. Ct.)]	498
Danae Shipping Corporation v. T.P.A.O. and Guven Turkish Insurance Co. Ltd. (The <i>Daffodil B</i>)	[Q.B. (Com. Ct.)]	498
Deutsche Conti-Handelsgesellschaft m.b.H.:—Bremer Handelsgesellschaft m.b.H. v.	[Q.B. (Com. Ct.)]	689
Djkkarta Lloyd (P. T.) and E. G. Thomson (Shipping) Ltd.:—R. A. Lister & Co. Ltd. v.	[C.A.]	361
Dow Chemical (Nederland) B.V. v. B.P. Tanker Co. Ltd. (The <i>Vorras</i>)	[C.A.]	579
D/S A/S Idaho v. Peninsular and Oriental Steam Navigation Co. (The <i>Strathnewton</i>)	[C.A.]	219
<i>Emmanuel C</i> , The	[Q.B. (Com. Ct.)]	310
European Asian Bank A.G. v. Punjab and Sind Bank	[C.A.]	611
European Grain & Shipping Ltd. v. Peter Cremer	[Q.B. (Com. Ct.)]	211
Exchange Theatre Ltd. v. Iron Trades Mutual Insurance Co. Ltd. and Others	[Q.B.]	674
Export Credits Guarantee Department v. Universal Oil Products Co., Procon Inc. and Procon (Great Britain) Ltd.	[C.A. & Q.B. (Com. Ct.)]	448

CONTENTS—continued

	COURT	PAGE
Filikos Shipping Corporation of Monrovia v. Shipmair B.V. (The <i>Filikos</i>)	[C.A.]	9
<i>Filikos</i> , The	[C.A.]	9
Finelvet A.G.:—Vinava Shipping Co. Ltd. v.	[Q.B. (Com. Ct.)]	503
Finney Lock Seeds Ltd.:—George Mitchell (Chesterhall) Ltd. v. Flota Petrolera Ecuatoriana:—Scandinavian Trading Tanker Co. A.B. v.	[C.A.]	168
Food Corporation of India, The:—N.Z. Michalos v.	[C.A.]	146
Fulton:—Grundy (Teddington) Ltd. v.	[Q.B. (Com. Ct.)]	409
	[C.A.]	16
<i>Garden City</i> (No. 2), The	[Q.B. (Adm. Ct.)]	485
Gatoil Anstalt v. Omenial Ltd. (The <i>Balder London</i>) (No. 2)	[Q.B. (Com. Ct.)]	492
Gibbs (Caryl Antony Vaughan):—Shell International Petroleum Co. Ltd. v.	[H.L.]	342
Gill and Duffus S.A. v. Berger & Co. Inc.	[C.A.]	622
Godwin v. Jenkin	[Q.B. (Div. Ct.)]	382
Government of the State of Kuwait v. Sir Frederick Snow & Partners and Others	[C.A.]	596
Groupe Sprinks S.A., Compagnie Francaise D'Assurances Europeenes, J. H. Minet & Co. Ltd., C. E. Heath & Co. (Marine) Ltd. and Others:—Commonwealth Insurance Co. of Vancouver v.	[Q.B. (Com. Ct.)]	67
Grundy (Teddington) Ltd. v. Fulton	[C.A.]	16
Gulf Shipping Line Ltd.:—Jadranska Slobodna Plovidba v.	[Q.B. (Com. Ct.)]	24
Güven Turkish Insurance Co. Ltd. and T.P.A.O.:—Danae Ship- ping Corporation v.	[Q.B. (Com. Ct.)]	498
Hallam Ltd.:—Atlantic Lines & Navigation Co. Inc. v.	[Q.B. (Com. Ct.)]	188
<i>Hannah Blumenthal</i> , The	[H.L.]	103
Hayn Roman & Co. S.A. v. Cominter (U.K.) Ltd.	[Q.B. (Com. Ct.)]	521
Heath (C.E.) (Marine) Ltd., Groupe Sprinks S.A., Compagnie Francaise D'Assurances Europeenes, J. H. Minet & Co. Ltd. and Others:—Commonwealth Insurance Co. of Vancouver v. Hellenic Shipyards S.A.:—Astro Venturoso Compania Naviera v. Hemisphere Shipping Co. Ltd.:—International Sea Tankers Inc. v.	[Q.B. (Com. Ct.)]	67
	[C.A.]	12
Himoff Maritime Enterprises Ltd.:—Japan Line Ltd. v.	[Q.B. (Com. Ct.)]	400
<i>Hoegh Apapa</i> , The	[Q.B. (Com. Ct.)]	29
	[C.A.]	154
Horizon Finance Corporation, Athos Shipping Co. S.A., Solidor Shipping Co. Ltd. and A. N. Cominos:—Telfair Shipping Corporation v.	[C.A.]	127
Hsu (W. T.):—Astro Exito Navegacion S.A. v.	[Q.B. (Com. Ct.)]	666
<i>Ignition</i> , The	[Q.B. (Div. Ct.)]	382
Ikerigi Compania Naviera S.A.:—Westfal-Larsen and Co. A/S v. Industrie Chimiche Italia Centrale S.p.A. v. NEA Ninemia Ship- ping Co. S.A. (The <i>Emmanuel C</i>)	[Q.B. (Com. Ct.)]	424
	[Q.B. (Com. Ct.)]	310
Insurance Co. of Africa v. Scor (U.K.) Reinsurance Co. Ltd. ...	[Q.B. (Com. Ct.)]	541
International Sea Tankers Inc. v. Hemisphere Shipping Co. Ltd. (The <i>Wenjiang</i>) (No. 2)	[Q.B. (Com. Ct.)]	400
Intertanker Ltd.:—Cleobulos Shipping Co. Ltd. v.	[C.A. & Q.B. (Com. Ct.)]	586
Iron Trades Mutual Insurance Co. Ltd. and Others:—Exchange Theatre Ltd. v.	[Q.B.]	674
Italcabo Societa di Navigazione S.p.A.:—Tradax Export S.A. v.	[Q.B. (Com. Ct.)]	514
Jadranska Slobodna Plovidba v. Gulf Shipping Line Ltd. (The <i>Matija Gubec</i>)	[Q.B. (Com. Ct.)]	24
Japan Line Ltd. v. Himoff Maritime Enterprises Ltd. (The <i>Kehrea</i>)	[Q.B. (Com. Ct.)]	29
Jenkin v. Godwin (The <i>Ignition</i>)	[Q.B. (Div. Ct.)]	382
<i>Jin Ping</i> , The	[Q.B. (Adm. Ct.)]	641

CONTENTS—*continued*

	COURT	PAGE
<i>Kehrea</i> , The	[Q.B. (Com. Ct.)]	29
Keppel Shipyard (Private) Ltd.:—Monvia Motorship Corporation v.	[P.C.]	356
Kerametal Ltd.:—Compania Naviera General S.A. v.	[C.A.]	373
Kuwait Insurance Co.:—Amin Rasheed Shipping Corporation v.	[C.A.]	235
La Pintada Compania Navegacion S.A. v. The President of India (The <i>La Pintada</i>)	[Q.B. (Com. Ct.)]	37
<i>La Pintada</i> , The	[Q.B. (Com. Ct.)]	37
Latin American Shipping Corporation:—Care Shipping Corporation v.	[Q.B. (Com. Ct.)]	302
Laughton, Shaw and Lewis:—Merkur Island Shipping Corporation v.	[C.A.]	154
Leif Hoegh & Co. A/S v. Maritime Mineral Carriers Ltd. (The <i>Marques de Bolarque</i>)	[Q.B. (Com. Ct.)]	660
Leigh and Sullivan Ltd. v. Aliakmon Shipping Co. Ltd. (The <i>Aliakmon</i>)	[Q.B. (Com. Ct.)]	203
Lewis, Laughton and Shaw:—Merkur Island Shipping Corporation v.	[C.A.]	154
Lister (R. A.) & Co. Ltd. and Others v. E. G. Thomson (Shipping) Ltd. and P. T. Djakarta Lloyd (The <i>Benarty</i>)	[C.A.]	361
Lloyd's:—Moran v.	[C.A.]	472
Lloyd's:—Moran v.	[Q.B. (Com. Ct.)]	51
L'Office National du The et du Sucre v. Philippine Sugar Trading (London) Ltd.	[Q.B. (Com. Ct.)]	89
<i>Lorna I</i> , The	[C.A.]	373
<i>Lucille</i> , The	[Q.B. (Com. Ct.)]	387
<i>Lucy</i> , The	[Q.B. (Com. Ct.)]	188
Malvern Fishing Co. Ltd. and Securicor (Scotland) Ltd.:—Ailsa Craig Fishing Company Ltd. v. (Note)	[H.L.]	183
Marcoluna Shipping Corporation S.A.:—Ameropa A.G. v.	[C.A.]	591
<i>Mariannina</i> , The	[C.A.]	12
Maritime Mineral Carriers Ltd.:—Leif Hoegh & Co. A/S v.	[Q.B. (Com. Ct.)]	660
<i>Marques de Bolarque</i> , The	[Q.B. (Com. Ct.)]	660
<i>Master Stelios</i> , The	[P.C.]	356
<i>Matija Gubec</i> , The	[Q.B. (Com. Ct.)]	24
Merkur Island Shipping Corporation v. Laughton, Shaw and Lewis (The <i>Hoegh Apapa</i>)	[C.A.]	154
<i>Messiniaki Bergen</i> , The	[Q.B. (Com. Ct.)]	424
<i>Messiniaki Tolmi</i> , The	[Q.B. (Com. Ct.)]	666
Metals and Ores Pte. Ltd. v. Compania de Vapores Stelvi S.A. (The <i>Tolmidis</i>)	[Q.B. (Com. Ct.)]	530
Michalos (N.Z.) v. The Food Corporation of India (The <i>Apollon</i>)	[Q.B. (Com. Ct.)]	409
Minet (J. H.) & Co. Ltd., Groupe Sprinks S.A., Compagnie Francaise D'Assurances Europeenes, C. E. Heath (Marine) Ltd. and Others:—Commonwealth Insurance Co. of Vancouver v.	[Q.B. (Com. Ct.)]	67
Mitchell (George) (Chesterhall) Ltd. v. Finney Lock Seeds Ltd.	[C.A.]	168
Monvia Motorship Corporation v. Keppel Shipyard (Private) Ltd. (The <i>Master Stelios</i>)	[P.C.]	356
Moran v. Lloyd's	[C.A.]	472
Moran v. Lloyd's	[Q.B. (Com. Ct.)]	51
<i>Morviken</i> , The	[H.L.]	1
<i>Munster</i> , The	[C.A.]	370
<i>Munster</i> , The	[Q.B. (Adm. Ct.)]	20
NEA Ninemia Shipping Co. S.A.:—Industrie Chimiche Italia Centrale S.p.A. v.	[Q.B. (Com. Ct.)]	310
Nippon Karji Kyokai and Others:—Resolute Maritime Inc. and Another v.	[Q.B. (Com. Ct.)]	431

CONTENTS—*continued*

	COURT	PAGE
Omenial Ltd.:—Gatoil Anstalt v.	[Q.B. (Com. Ct.)]	492
Pagnan (R.) and F. Lli.:—Afovos Shipping Co. S.A. v.	[H.L.]	335
Partenreederei Hannah Blumenthal:—Paal Wilson & Co. A/S v.	[H.L.]	103
Peninsular and Oriental Steam Navigation Co.:—D/S A/S Idaho v.	[C.A.]	219
Petrofina S.A. and Syrian Petroleum Co. Ltd.:—Skips A/S Nordheim and Others v.	[Q.B. (Com. Ct.)]	416
Philippine Sugar Trading (London) Ltd.:—L'Office National du The et du Sucre v.	[Q.B. (Com. Ct.)]	89
Polish Steam Ship Co. v. Atlantic Maritime Co. (The <i>Garden City</i>) (No. 2)	[Q.B. (Adm. Ct.)]	485
President of India, The:—La Pintada Compania Navigacion S.A. v.	[Q.B. (Com. Ct.)]	37
Procon Inc., Procon (Great Britain) Ltd. and Universal Oil Products Co.:—Export Credits Guarantee Department v. ...	[C.A. & Q.B. (Com. Ct.)]	448
Punjab and Sind Bank:—European Asian Bank A.G. v.	[C.A.]	611
Raiffeisen Hauptgenossenschaft E.G.:—Bremer Handelsgesellschaft m.b.H. v.	[Q.B. (Com. Ct.)]	434
Rayner (J. H.) (Mincing Lane) Ltd.:—Banque de L'Indochine et de Suez S.A. v.	[C.A.]	228
Rayner (J. H.) (Mincing Lane) Ltd. v. Bank Fur Gemeinwirtschaft A.G.	[C.A.]	462
Resolute Maritime Inc. and Another v. Nippon Karji Kyokai and Others (The <i>Skopas</i>)	[Q.B. (Com. Ct.)]	431
Ricargo Trading S.A. v. Spliethoff's Bevrachtungskantor B.V. (The <i>Tassos N</i>)	[Q.B. (Com. Ct.)]	648
<i>Saint Anna</i> , The	[Q.B. (Adm. Ct.)]	637
<i>Salem</i> , The	[H.L.]	342
Sameiet Solholt:—Sotiros Shipping Inc. and Aeco Maritime S.A. v.	[C.A.]	605
<i>Sandalion</i> , The	[Q.B. (Com. Ct.)]	514
Scandinavian Trading Tanker Co. A.B. v. Flota Petrolera Ecuatoriana (The <i>Scaptrade</i>)	[C.A.]	146
<i>Scaptrade</i> , The	[C.A.]	146
Schleswig-Holsteinische Landwirtschaftliche Hauptgenossenschaft E.G. m.b.H. v. Bremer Handelsgesellschaft m.b.H. ...	[Q.B. (Com. Ct.)]	434
Scor (U.K.) Reinsurance Co. Ltd.:—Insurance Co. of Africa v. ...	[Q.B. (Com. Ct.)]	541
Securicor (Scotland) Ltd. and Malvern Fishing Co. Ltd.:—Ailsa Craig Fishing Co. Ltd. v. (Note)	[H.L.]	183
<i>Sennar</i> , The	[Q.B. (Adm. Ct.)]	295
Shaw, Lewis and Laughton:—Merkur Island Shipping Corporation v.	[C.A.]	154
Shell International Petroleum Co. Ltd. v. Caryl Antony Vaughan Gibbs (The <i>Salem</i>)	[H.L.]	342
Shipmair B.V.:—Filikos Shipping Corporation of Monrovia v....	[C.A.]	9
Skips A/S Nordheim and Others v. Syrian Petroleum Co. Ltd. and Petrofina S.A. (The <i>Varenna</i>)	[Q.B. (Com. Ct.)]	416
<i>Skopas</i> , The	[Q.B. (Com. Ct.)]	431
Snow (Sir Frederick) & Partners and Others:—Government of the State of Kuwait v.	[C.A.]	596
<i>Solholt</i> , The	[C.A.]	605
Solidor Shipping Co. Ltd., Athos Shipping Co. S.A., Horizon Finance Corporation and A. N. Cominos:—Telfair Shipping Corporation v.	[C.A.]	127
Sotiros Shipping Inc. and Aeco Maritime S.A. v. Sameiet Solholt (The <i>Solholt</i>)	[C.A.]	605
Soya G.m.b.H. Mainz Kommanditgesellschaft v. White	[H.L.]	122

CONTENTS—continued

	COURT	PAGE
<i>Span Terza</i> , The	[C.A.]	441
<i>Splithoff's Bevrachtungskantor B.V.</i> :— <i>Ricargo Trading S.A. v. Steiers Lawn & Sports Inc. and Berliner Motor Corporation v. Sun Alliance and London Insurance Ltd.</i>	[Q.B. (Com. Ct.)]	648
<i>Strathallan</i> , The (Note)	[Q.B. (Com. Ct.)]	320
<i>Strathnewton</i> , The	[H.L.]	183
<i>Sudan Oil Seeds Co. Ltd.</i> :— <i>Tracom S.A. v.</i>	[C.A.]	219
<i>Sun Alliance and London Insurance Ltd.</i> :— <i>Berliner Motor Corporation and Steiers Lawn & Sports Inc. v.</i>	[Q.B. (Com. Ct.)]	560
<i>Sun International Ltd. and Sun Oil Trading Co.</i> :— <i>Bulk Oil (Zug) A.G. v.</i>	[Q.B. (Com. Ct.)]	320
<i>Syrian Petroleum Co. Ltd. and Petrofina S.A.</i> :— <i>Skips A/S Nordheim and Others v.</i>	[Q.B. (Com. Ct.)]	655
<i>Tassos</i> , The	[Q.B. (Com. Ct.)]	416
<i>Telfair Shipping Corporation v. Athos Shipping Co. S.A., Solidor Shipping Co. Ltd., Horizon Finance Corporation and A. N. Cominos (The Athos)</i>	[Q.B. (Com. Ct.)]	648
<i>Texaco Southampton</i> , The	[C.A.]	127
<i>Thomson (E. G.) (Shipping) Ltd. and P. T. Djakarta Lloyd</i> :— <i>R. A. Lister & Co. Ltd. and Others v.</i>	[Aust. Ct.]	94
<i>Tolmidis</i> , The	[C.A.]	361
<i>T.P.A.O. and Guven Turkish Insurance Co. Ltd.</i> :— <i>Danae Shipping Corporation v.</i>	[Q.B. (Com. Ct.)]	530
<i>Tracom S.A. v. Sudan Oil Seeds Co. Ltd.</i>	[Q.B. (Com. Ct.)]	498
<i>Tradax Export S.A.</i> :— <i>Andre & Cie S.A. v.</i>	[Q.B. (Com. Ct.)]	560
<i>Tradax Export S.A.</i> :— <i>Congimex Companhia Geral de Comercio Importadora & Exportadora S.A.R.L. v.</i>	[C.A.]	254
<i>Tradax Export S.A.</i> :— <i>Cook Industries Inc. v.</i>	[C.A.]	250
<i>Tradax Export S.A. v. Italcabo Societa di Navigazione S.p.A. (The Sandalion)</i>	[Q.B. (Com. Ct.)]	327
<i>Uni-Ocean Lines Pte Ltd. v. C-Trade S.A. (The Lucille)</i>	[Q.B. (Com. Ct.)]	514
<i>Universal Oil Products Co., Procon Inc. and Procon (Great Britain) Ltd.</i> :— <i>Export Credits Guarantee Department v.</i>	[Q.B. (Com. Ct.)]	387
<i>Varennia</i> , The	[C.A. & Q.B. (Com. Ct.)]	448
<i>Vinava Shipping Co. Ltd. v. Finelvet A.G. (The Chrysalis)</i>	[Q.B. (Com. Ct.)]	416
<i>Vladimir Timofeyev</i> , The	[Q.B. (Com. Ct.)]	503
<i>Vorras</i> , The	[C.A.]	378
<i>Waring (F. R.) (U.K.) Ltd. v. Administracao Geral do Acucar E do Alcool E.P.</i>	[C.A.]	579
<i>Wenjiang</i> , The, (No. 2)	[Q.B. (Com. Ct.)]	45
<i>Westfal-Larsen and Co. A/S v. Ikeregi Compania Naviera S.A. (The Messiniaki Bergen)</i>	[Q.B. (Com. Ct.)]	400
<i>White</i> :— <i>Soya G.m.b.H. Mainz Kommanditgesellschaft v.</i>	[Q.B. (Com. Ct.)]	424
<i>Wilson (Paal) & Co. A/S v. Partenreederei Hannah Blumenthal (The Hannah Blumenthal)</i>	[H.L.]	122
<i>Worldwide Carriers Ltd. and Another v. Ardtran International Ltd. and Others</i>	[H.L.]	103
	[Q.B. (Com. Ct.)]	61

LLOYD'S LAW REPORTS

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

[1983] VOL. 1]

The "Morviken"

PART 1

HOUSE OF LORDS

Oct. 25, 1982

THE "MORVIKEN"

Before Lord DIPLOCK,
Lord KEITH OF KINKEL,
Lord ROSKILL,
Lord BRANDON OF OAKBROOK and
Lord BRIGHTMAN

Admiralty practice — Stay of action — Exclusive jurisdiction clause — Damage to cargo — Bill of lading provided for all disputes to be brought before Court in Amsterdam — Whether clause valid — Whether dispute strongly connected with England — Whether Hague-Visby Rules applicable — Whether English action should be stayed — Carriage of Goods by Sea Act, 1971.

In March, 1978, an asphalt road finishing machine (the Barber-Greene SA-35 Finisher) was shipped on board *Haico Holwerde* at Leith in the United Kingdom for carriage to Bonaire in the Dutch Antilles. The bill of lading issued in respect of the finisher contained inter alia the following clause:

Law of application and jurisdiction: The law of the Netherlands in which the Hague Rules as adopted by the Brussels Convention of 25th August, 1924 are incorporated . . . shall apply to this contract. The maximum liability per package is D.fl.1250 . . . All actions under the present contract of carriage shall be brought before the Court of Amsterdam and no other Court shall have jurisdiction with regard to any such action . . .

The finisher which weighed 9906 kilograms was transhipped in Holland on to the defendants' (the time charterers') vessel *Morviken* for on-carriage to Bonaire. When the finisher was being discharged at Bonaire it dropped from a height of about 4 ft. and fell to the quay and was severely damaged.

The plaintiffs alleged that the finisher had been fitted with four lifting rings to which hooks from a four-leg sling could be attached but the defendants' servants had failed to use the lifting rings in the manner recommended and had instead attempted to lift the finisher in a way which placed excessive strain upon one of the lifting rings with the result that it broke.

The plaintiffs therefore brought an action in rem against the defendants claiming damages.

By notice of motion the defendants applied for an order that all further proceedings in the action be stayed on the ground that all actions arising under the bill of lading should be brought before the Court of Amsterdam.

The plaintiffs argued that the action ought not to be stayed on the ground that the jurisdiction clause was unenforceable or alternatively if the clause was enforceable there was strong reason for refusing the stay.

The plaintiffs further sought to rely upon the Carriage of Goods by Sea Act, 1971, which gave effect to the Hague Rules as amended by Protocol signed at Brussels on Feb. 23, 1968. Section 1 (3) of the Act provided inter alia:

... the . . . provisions shall have the force of law in relation to and connection with the carriage of goods by sea in ships where the port of shipment is a port in the United Kingdom.

The material articles of the Hague-Visby Rules provided inter alia:

art. III, r. 8: Any clause . . . in a contract of carriage relieving the Carrier from liability from . . . damage to or in connection with the goods or lessening such liability otherwise than as provided in these rules shall be null and void and of no effect . . .

art. IV, r. 5 (g): By agreement between the carrier and shipper other maximum amounts than those mentioned in sub-paragraph (a) of this paragraph may be fixed provided that no maximum amount so fixed should be less than the appropriate maximum mentioned in that sub-paragraph.

The plaintiffs contended that since the maximum provided in the bill of lading clause was less than

the appropriate maximum mentioned in the rules that clause was null and void and of no effect.

—*Held*, by Q.B. (Adm. Ct.) (SHEEN, J.), that (1) the Admiralty Court had jurisdiction to hear and determine the dispute and the jurisdiction of the Court had been properly invoked by a writ in rem;

(2) the Courts would be very slow to refuse a stay if the effect of proceeding here would be to change the bargain between the parties by increasing the limits of liability of the defendant above a limit which had been expressly agreed;

(3) the submission by the plaintiffs that the Hague-Visby Rules overrode the express agreement of the parties that the proper law of the contract was the law of the Netherlands did not need to be decided upon in that the clause in the bill of lading was composed of three separate paragraphs each dealing with a separate and distinct subject matter; the agreement which established the maximum liability of the carrier was contained in the first paragraph and since that paragraph was severable from the remainder of the clause, if it was deleted, the agreement that all actions should be brought in Amsterdam would remain intact;

(4) therefore the agreement as to jurisdiction was valid and enforceable whether the obligations of the parties were considered under the law of England or the law of the Netherlands;

(5) the submission by the plaintiffs, that the limit of the defendants' liability if the dispute was resolved in Holland was so low that it was not worth suing in Holland was a factor which should be taken into account when the Court was considering how its discretion whether to grant a stay, should be exercised, would be rejected in that the Court ought not to be influenced by the probable result of litigation in considering whether or not to grant a stay of the action; if however, such a factor ought to be taken into account that factor would weigh in favour of the defendants since it was an express term of the contract that the maximum liability thereunder was D.fl.1250 per package and the plaintiffs had no ground for complaint if the result of the litigation was that they recovered no more than the limit agreed in the contract;

(6) the submission by the plaintiffs that the dispute had a strong connection with England and that if the proceedings took place in Amsterdam there would be extra time involved for witnesses to travel to Amsterdam appeared to be a marginal consideration, there was no great issue of principle involved and on the facts the plaintiffs had not shown strong grounds for saying that the Court ought to exercise its discretion by permitting these proceedings to continue contrary to the agreement of the parties and the application for a stay would be granted.

On appeal by the plaintiffs:

—*Held*, by C.A. (Lord DENNING, M.R., ACKNER, L.J. and Sir SEBAG SHAW), that (1) in

the words "the Rules as set out in the Schedule to this Act shall have the force of law" in s. 1 (2) of the Carriage of Goods by Sea Act, 1971, meant that in all Courts of the United Kingdom, the provisions of the rules, i.e., the Hague-Visby Rules, were to be given the coercive force of law so that in every case properly brought before the Courts of the United Kingdom the rules were to be given supremacy over every other provision of the bill of lading; and anything in the bill of lading which was inconsistent, with the rules or which derogated from the effect of them was to be rejected; there was no contracting out of the rules;

(2) since art. X of the Hague-Visby Rules provided that the provisions of the rules were to apply to every bill of lading relating to the carriage of goods between ports in two different states if (a) the bill of lading was issued in a contracting state, or (b) the carriage was from a port in a contracting state, whatever might be the nationality of the ship, carrier or consignee, those rules applied to the bill of lading here and since the bill of lading fell within category (a) and (b) of art. X, the defendants were not entitled to contract out of the rules by selecting a law which did not administer those rules;

(3) art. III, r. 8 of the Hague-Visby Rules rendered cl. 2 of the bill of lading null and void in that cl. 2 restricted the liability of the defendants to D.fl.1250 which was much less than the liability under art. IV, r. 5 (a) and cl. 2 incorporated the Dutch law and the old Hague Rules which limited the liability of the defendants to the small amount contained in the old Hague Rules;

(4) the learned Judge had erred in taking too restrictive a view of the application and operation of the Act and the rules which it adopted and in the circumstances the appeal would be allowed and the stay removed.

On appeal by the defendants.

—*Held*, by H.L. (Lord DIPLOCK, Lord KEITH OF KINKEL, Lord ROSKILL, Lord BRANDON OF OAKBROOK and Lord BRIGHTMAN), that (1) the provisions of s. 1 of the Act appeared to be free from any ambiguity; the Hague-Visby Rules, or rather all those of them that were included in the schedule, were to have the force of law in the United Kingdom; they were to be treated as if they were part of directly enacted statute law and they were to be given a purposive, rather than a narrow literalistic, construction (*see* p. 5, col. 2);

(2) the bill of lading was one to which the Hague-Visby Rules were expressly made applicable by art. X; it fell within both par. (a) and par. (b); it was issued in a contracting state, the United Kingdom, and it covered a contract for carriage from a port in a contracting state and it also fell directly within s. 1 (3) of the 1971 Act (*see* p. 5, col. 2; p. 6, col. 1);

(3) the first paragraph of cl. 2 of the bill of lading was ambiguous in that it might have meant that the general law of the Netherlands (including its private international law) relating to the carriage of goods by sea was adopted as the proper

law or it might have meant that only that part of the law of the Netherlands which incorporated the Hague Rules was to be applicable to the contract; but whether this paragraph was given the wider or narrower meaning, in so far as it purported to lessen the liability of the carriers for which art. IV, r. 5 of the Hague-Visby Rules provided, it unquestionably contravened art. III, r. 8 and by that rule was deprived of any effect (*see* p. 6, col. 1);

(4) the submission by the defendant that the choice of forum clause fell outside the ambit of art. III, r. 8 would be rejected in that the only sensible meaning to be given to the description of provisions in contracts which were rendered "null and void and of no effect" by this rule was one which would embrace every provision in a contract which, if it were applied, would have the effect of lessening the carriers' liability otherwise than as provided in the rules (*see* p. 6, col. 2; p. 7, col. 1);

(5) the choice of forum clause did not however *ex facie* offend against art. III, r. 8; it was a provision of the contract that was subject to a condition subsequent and it came into operation only upon the occurrence of a future event that might or might not occur; so a choice of forum clause, which selected as the exclusive forum for the resolution of disputes a Court which would not apply the Hague-Visby Rules, even after such clause came into operation, did not necessarily always have the effect of lessening the liability of the carrier in a way that attracted the application of art. III, r. 8 (*see* p. 7, col. 1);

(6) having regard to the nature of the dispute, the learned Judge was bound to treat the bill of lading as if it contained neither the first paragraph nor the third paragraph of condition 2 and consequently was without any choice of forum clause; in exercising his discretion to grant the stay, the learned Judge had given decisive weight to the fact that by accepting the bill of lading the plaintiffs had agreed not to bring any action under the contract against the defendants in any Court other than the Court of Amsterdam; since by English law he was required to treat the choice of law forum clause as null and void and of no effect it followed that by giving any weight to it in deciding how to exercise his discretion he was taking into consideration a matter which he was not entitled to take into consideration (*see* p. 8, col. 1);

(7) the choice of forum clause being eliminated from the contract of carriage, the plaintiffs were *prima facie* at liberty to avail themselves of the right of access to the Admiralty Court and the appeal would be dismissed (*see* p. 8, cols. 1 and 2).

———*MacShannon v. Rockware Glass Ltd.*, [1978] A.C. 795, applied.

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

Castanho v. Brown & Root (U.K.) Ltd., [1981] 1 Lloyd's Rep. 113; [1981] A.C. 557;

Compagnie D'Armement Maritime v. Compagnie Tunisienne de Navigation, (H.L.) [1970] 2 Lloyd's Rep. 99; [1971] A.C. 572;

MacShannon v. Rockware Glass Ltd., (H.L.) [1978] A.C. 795;

Stag Line Ltd. v. Foscolo, Mango & Co., (H.L.) (1931) 41 Ll.L.Rep. 165; [1932] A.C. 328;

Vita Food Products Inc. v. Unus Shipping Co., (P.C.) (1938) 63 Ll.L.Rep. 21; [1939] A.C. 277.

This was an appeal by the defendants the time charterers of the vessel *Molviken* from the decision of the Court of Appeal ([1982] 1 Lloyd's Rep. 325) allowing the appeal of the plaintiffs, the owners of an asphalt road finishing machine (a Barber-Green S.A. 35 Finisher) from the decision of Mr. Justice Sheen ([1981] 2 Lloyd's Rep. 61) in which he granted the defendants a stay of all proceedings in the action.

Mr. Robert S. Alexander, Q.C. and Mr. Michael Dean, Q.C. (instructed by Messrs. Clyde & Co.) for the plaintiffs; Mr. Johan Steyn, Q.C. and Mr. Angus Glennie (instructed by Messrs. Middleton Lewis Lawrence Graham) for the defendants.

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

On Oct. 25, 1982, the House of Lords dismissed the appeal. Their reasons for the decision were given at a later date.

Thursday, Nov. 25, 1982

JUDGMENT

Lord DIPLOCK: My Lords, on Mar. 21, 1978, some nine months after the Carriage of Goods by Sea Act, 1971 ("the 1971 Act") came into force, the respondents ("the shippers") shipped from the port of Leith a large machine weighing 9906 kilograms upon a vessel, *Haico Holwerde*, belonging to the appellant, the Royal Netherlands Steamship Company ("the carriers"), for carriage to Bonaire in the Netherlands Antilles. In respect of this carriage, the carriers issued at the port of Leith a through bill of lading providing for transshipment at Amsterdam.

The shippers claim that the machine was damaged during the course of discharge from the carrying vessel at Bonaire as a result of the negligence of the servants of the carrying vessel which for the ocean leg of the voyage was in fact a ship under the Norwegian flag, *Molviken*, of which the carriers were charterers.

On Feb. 26, 1980, the shippers commenced an action in rem in the High Court against *Hollandia*, a sister ship of *Haico Holwerde*, belonging to the carriers. *Hollandia* was within the jurisdiction of the Admiralty Court though she was not in fact arrested because, as so often happens, the carriers' solicitors agreed to accept service of the writ without prejudice to their right to move the Admiralty Court for a stay of all further proceedings.

The only ground on which such stay was sought which it is necessary for your Lordships to consider, was based on the incorporation in the bill of lading of a printed clause included among some 16 other clauses appearing under the heading "Company's Standard Conditions". The clause relied upon was condition 2 which was in the following terms:—

Law of application and jurisdiction: The law of the Netherlands in which the Hague Rules, as adopted by the Brussels Convention of 25th August 1924 are incorporated — with the exception of article 9 — shall apply to this contract. The maximum liability per package is D.fl. 1,250. For goods loaded or discharged at a Belgian port, the rules of article 91 of chapter 2 of the Belgian Commercial Code shall apply.

Whenever the Carrier is not the Owner or Demise Charterer of the Ocean vessel, the Owner or Demise Charterer of such vessel shall, nevertheless, be entitled to avail himself of every exemption, limitation, condition and liberty herein contained, and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Carrier or to which the Carrier is entitled hereunder as if this Bill of Lading had been issued by the said Owner or Demise Charterer in his own name and on his own behalf.

All actions under the present contract of carriage shall be brought before the Court of Amsterdam and no other Court shall have jurisdiction with regard to any such action unless the Carrier appeals to another jurisdiction or voluntarily submits himself thereto.

The last paragraph of this clause is unquestionably a choice of forum clause, weighted no doubt in favour of the carriers, providing for the exclusive jurisdiction of the Court of Amsterdam unless the carriers elect otherwise. It was submitted on behalf of the carriers that, since they had not waived it, the High Court in England ought to give effect to the choice of forum clause by granting the stay. Although the Admiralty Court in England had undoubted jurisdiction to determine disputes between the parties in the exercise

of its in rem jurisdiction over the *Hollandia*, it would, it was contended, be an unjudicial exercise of that discretion to allow the action to proceed in the High Court in England.

My Lords, as is apparent from the first paragraph of the clause, the Netherlands at the time of the issue of the bill of lading were parties to the Brussels Convention of 1924, commonly known as the Hague Rules, which were scheduled to the Carriage of Goods by Sea Act, 1924 ("the 1924 Act"); but the Netherlands had not by then ratified the Brussels protocol of 1968 amending the Hague Rules, commonly known as the Hague-Visby Rules, which are scheduled to the 1971 Act. The Hague-Visby Rules modify the Hague Rules in several relevant respects and in particular by the new art. IV (5) they provide a higher maximum monetary liability of a carrier to a shipper or consignee in damages for any negligence or breach of contract for which the carrier is not relieved from liability under art. IV. In the instant case, under the Hague Rules the maximum liability of the carriers would be calculated on the package or unit basis, for which alone the Hague Rules provide, and would amount to about £250; whereas under the Hague-Visby Rules the shippers would be entitled to the higher maximum based on weight which would amount to some £11,000.

It is common ground between the parties that if the dispute were to be litigated before the Court of Amsterdam, that Court would apply the lower maximum applicable under the Hague Rules. Since in English law it is a question of fact what a Netherlands Court would decide under Netherlands law, your Lordships must, I think, in determining this appeal accept as accurate the statement of the law that would be applied by the Court of Amsterdam upon which the parties are agreed.

The provisions of the 1971 Act that are most directly relevant to the instant appeal are sub-s. (1) to (3) of s. 1 which reads as follows:—

1.—(1) In this Act, 'the Rules' means the International Convention for the unification of certain rules of law relating to bills of lading signed at Brussels on 25th August 1924, as amended by the Protocol signed at Brussels on 23rd February 1968.

(2) The provisions of the Rules, as set out in the Schedule to this Act, shall have the force of law.

(3) Without prejudice to subsection (2) above, the said provisions shall have effect (and have the force of law) in relation to and in connection with the carriage of goods by sea in ships where the port of shipment

is a port in the United Kingdom, whether or not the carriage is between ports in two different States within the meaning of Article X of the Rules.

The provisions of the Hague-Visby Rules set out in the schedule to the Act, upon the meaning of which this appeal mainly turns, are r. 8 of art. III (read in conjunction with rr. 1 and 2 of the same article and r. 5 (a) of art. IV) and art. X.

For ease of reference I have set these rules out below.

Article III

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to—

(a) Make the ship seaworthy.

(b) Properly man, equip and supply the ship.

(c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for reception, carriage and preservation.

2. Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried . . .

...

8. Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault, or failure in the duties and obligation provided in this article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect. A benefit of insurance in favour of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability.

Article IV

5. (a) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding the equivalent of 10,000 francs per package or unit or 30 francs per kilo of gross weight of the goods lost or damages, whichever is the higher.

Article X

The provisions of these Rules shall apply to every bill of lading relating to the carriage of goods between ports in two different States if:

(a) the bill of lading is issued in a contracting State,

or

(b) the carriage is from a port in a contracting State,

or

(c) the contract contained in or evidenced by the bill of lading provides that these Rules or legislation or any State giving effect to them are to govern the contract,

whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person.

My Lords, the provisions in s. 1 of the Act that I have quoted appear to me to be free from any ambiguity perceptible to even the most ingenious of legal minds. The Hague-Visby Rules, or rather all those of them that are included in the schedule, are to have the force of law in the United Kingdom: they are to be treated as if they were part of directly enacted statute law. But since they form part of an international convention which must come under the consideration of foreign as well as English Courts, it is, as Lord Macmillan said of the Hague Rules themselves in *Stag Line Ltd. v. Foscolo, Mango & Co.* (1931) 41 Ll.L.Rep. 165; [1932] A.C. 328 at pp. 174 and 350—

... desirable in the interest of uniformity that their interpretation should not be rigidly controlled by domestic precedents of antecedent date, but rather that the language of the rules should be construed on broad principles of general acceptance.

They should be given a purposive rather than a narrow literalistic construction, particularly wherever the adoption of a literalistic construction would enable the stated purpose of the international convention, viz. the unification of domestic laws of the contracting States relating to bills of lading, to be evaded by the use of colourable devices that, not being expressly referred to in the rules, are not specifically prohibited.

The bill of lading issued to the shippers by the carriers upon the shipment of the goods at the Scottish port of Leith was one to which the Hague-Visby Rules were expressly made applicable by art. X; it fell within both par. (a) and par. (b); it was issued in a contracting

State, the United Kingdom, and it covered a contract for carriage from a port in a contracting State. For good measure, it also fell directly within s. 1 (3) of the 1971 Act itself.

The first paragraph of condition 2 of the bill of lading, prescribing as it does for a per package maximum limit of liability on the part of the carriers for loss or damage arising from negligence or breach of contract instead of the higher per kilogram maximum applicable under the Hague-Visby Rules, is *ex facie* a clause in a contract of carriage which purports to lessen the liability of the carriers for such loss or damage otherwise than is provided in the Hague-Visby Rules. As such it is therefore rendered null and void and of no effect under art. III, r. 8. So much indeed was conceded by Counsel for the carriers, subject to a possible argument to the contrary which was briefly mentioned but not elaborated upon. I shall have to revert to this argument later, but can do so with equal brevity.

The first paragraph of condition 2 of the bill of lading down to the first full stop is ambiguous. It may mean that the general law of the Netherlands (including its private international law) relating to carriage of goods by sea is adopted as the "proper law" of the contract of carriage or it may mean, as the absence of a comma between "Netherlands" and "in which" might suggest, that only that part of the law of the Netherlands which incorporates the Hague Rules is to be applicable to the contract which, in other respects, is to be governed by what the Court seized of any claim under the contract would treat as being its "proper law". In the case of a contract made in Scotland for the carriage of goods from a port in Scotland, the "proper law" would, *prima facie* at any rate, be Scots law, and this, so far as contracts of carriage of goods by sea are concerned, is in all relevant respects the same as English law. But whether the first paragraph of condition 2 of the bill of lading be given the wider or the narrower meaning, in so far as it purports to lessen, as it expressly does, the liability of the carriers for which art. IV, r. 5 of the Hague-Visby Rules provides, it unquestionably contravenes art. III, r. 8 and by that rules is deprived of any effect in English or Scots law.

The Court of Appeal were unanimous in so holding (see [1982] 1 Lloyd's Rep. 325) and Counsel for the carriers has not argued to the contrary in this House, at any rate so far as the paragraph limits the maximum liability of the carriers to D.fl.1250 instead of the higher maximum for which the Hague-Visby Rules provide. Mr. Justice Sheen, at first instance [1981] 2 Lloyd's Rep. 61, found it unnecessary to

decide this point because he regarded the three paragraphs of condition 2 as severable, since they deal with separate subject matters. Indeed, the second paragraph does not deal with choice of law, whether substantive or curial, at all. It was on the third paragraph of condition 2, which deals only with choice of forum that the learned Judge based his judgment granting the stay. This he felt able to do notwithstanding the fact that, although on the face of the third paragraph it dealt only with the choice of curial law which (as was held by this House in *Compagnie D'Armement Maritime v. Compagnie Tunisienne de Navigation*, [1970] 2 Lloyd's Rep. 99; [1971] A.C. 572) may be a different law from that chosen as the "proper law" of the contract, it was common ground between the parties that to give effect to the choice of the Court of Amsterdam as the forum would have the same consequences in limiting the carriers' liability as would the application of the first paragraph of the clause, since the Court of Amsterdam would treat as the applicable substantive law that substantive law for which the first paragraph of condition 2 provides.

Counsel for the carriers sought to justify the Judge's decision on this point by putting a narrow literalistic interpretation on art. III, r. 8 of the Hague-Visby Rules. A choice of forum clause, he contended, is to be classified as a clause which only prescribes the procedure by which disputes arising under the contract of carriage are to be resolved. It does not *ex facie* deal with liability at all and so does not fall within the description—

... any clause, covenant, or agreement in a contract of carriage ... lessening ... liability ...

so as to bring it within art. III, r. 8; even though the consequence of giving effect to the clause will be to lessen, otherwise than is provided in the Hague-Visby Rules, the liability of the carrier for loss or damage to or in connection with the goods arising from negligence, fault or failure in the duties and obligations provided in the rules.

My Lords, like all three members of the Court of Appeal, I have no hesitation in rejecting this narrow construction of art. III, r. 8, which looks solely to the form of the clause in the contract of carriage and wholly ignores its substance. The only sensible meaning to be given to the description of provisions in contracts of carriage which are rendered "null and void and of no effect" by this rule is one which would embrace every provision in a contract of carriage which, if it were applied, would have the effect of lessening the