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**CASES CITED**

	PAGE
Admiralty v. <i>Divina</i> (Owners) and Others (The <i>Truculent</i> )	[1952] P. 1; [1951] 2 Lloyd's Rep. 308 ... 335
<i>Aello</i> , The ... ..	[1961] A.C. 135; [1960] 1 Lloyd's Rep. 623 ... 198
Agenoria Steamship Company, Ltd. v. Merchants' Marine Insurance Company, Ltd.	(1903) 8 Com. Cas. 212 ... 361
Aktieselskabet Reidar v. Arcos, Ltd. ... ..	[1927] 1 K.B. 352; (1926) 25 Ll.L.Rep. 513 ... 166, 533
<i>Albion</i> , The ... ..	[1953] 2 Lloyd's Rep. 82; [1953] 1 W.L.R. 1026 ... 49
Alderslade v. Hendon Laundry, Ltd. ... ..	[1945] 1 K.B. 189; [1945] 1 All E.R. 244 ... 130
Alexander v. Railway Executive ... ..	[1951] 2 K.B. 882 ... 49
Alexander & Sons v. Aktieselskabet Dampskibet Hansa and Others	[1920] A.C. 88 ... 198
Alvion Steamship Corporation Panama v. Galban Lobo Trading Company S.A. of Havana (The <i>Rubystone</i> )	[1955] 1 Q.B. 430; [1955] 1 Lloyd's Rep. 9 ... 574
Ambatielos v. Grace Brothers & Co., Ltd. ... ..	(1922) 13 Ll.L.Rep. 227 ... 166
Angliss & Co. (Australia) Proprietary, Ltd. v. Peninsular & Oriental Steam Navigation Company	[1927] 2 K.B. 456; (1927) 28 Ll.L.Rep. 202 ... 49
Anglo-Saxon Petroleum Company, Ltd. v. Adamastos Shipping Company, Ltd.	[1957] 2 Q.B. 233; [1957] 1 Lloyd's Rep. 79; (C.A.) [1957] 1 Lloyd's Rep. 271 ... 166
<i>Anonity</i> , The ... ..	[1961] 2 Lloyd's Rep. 117 ... 335
<i>Armar</i> , The ... ..	[1954] 2 Lloyd's Rep. 95; [1954] A.M.C. 1674 ... 361
<i>Arosa Kulm</i> (No. 2), The ... ..	[1960] 1 Lloyd's Rep. 97 ... 565
Asiatic Petroleum Company, Ltd. v. Lennard's Carrying Company, Ltd.	[1914] 1 K.B. 419 ... 335
Atlantic Shipping and Trading Company, Ltd. v. Louis Dreyfus & Co.	[1922] 2 A.C. 250; (1922) 10 Ll.L.Rep. 707 ... 49
Atwood and Others v. Sellar & Co. ... ..	(1879) 4 Q.B.D. 342; (C.A.) (1880) 5 Q.B.D. 286 ... 361
Badar Bee v. Habib Merican Noordin and Others	[1909] A.C. 615 ... 223
Bank of Australasia and Others v. Clan Line Steamers, Ltd.	[1916] 1 K.B. 39 ... 49
Barrett v. London General Insurance Company, Ltd.	[1935] 1 K.B. 238; (1934) 50 Ll.L.Rep. 99 ... 49
Bartlett v. Admiralty and Another (The <i>Vadne</i> )	[1959] 2 Lloyd's Rep. 480 ... 69, 320
Battersby and Others v. Anglo-American Oil Company, Ltd., and Others	[1945] 1 K.B. 23 ... 244
Bawden v. London, Edinburgh, and Glasgow Assurance Company	[1892] 2 Q.B. 534 ... 113
Beauchamp v. Turrell ... ..	[1952] 2 Q.B. 207; [1952] 1 Lloyd's Rep. 266 ... 335
Bell v. Travco Hotels, Ltd. ... ..	[1953] 1 Q.B. 473 ... 145
Benham v. Gambling ... ..	[1941] A.C. 157 ... 145

## CASES CITED—continued

PAGE

<i>Berwickshire, The</i> ... ..	[1950] P. 204; (1950) 83 Ll.L.Rep. 376 ... ..	236
<i>Billings &amp; Sons, Ltd. v. Riden</i> ... ..	[1958] A.C. 240 ... ..	585
<i>Bird v. Cocking &amp; Sons, Ltd.</i> ... ..	[1951] 2 T.L.R. 1260 ... ..	145
<i>Blackford &amp; Sons (Calne), Ltd. v. Christchurch Corporation</i> ... ..	(1962) 60 L.G.R. 214 ... ..	13
<i>Blunt v. Blunt</i> ... ..	[1943] A.C. 517 ... ..	145
<i>Bocock v. Enfield Rolling Mills, Ltd.</i> ... ..	[1954] 1 W.L.R. 1303 ... ..	145
<i>Bolton (Engineering) Company, Ltd. v. T. J. Graham &amp; Sons, Ltd.</i> ... ..	[1957] 1 Q.B. 159 ... ..	335
<i>Boulting and Another v. Association of Cinematograph, Television and Allied Technicians</i> ... ..	[1963] 2 Q.B. 607 ... ..	207
<i>Breynton (Owners) v. Theodoridi &amp; Co.</i> ... ..	(1924) 19 Ll.L.Rep. 409 ... ..	198
<i>British and Foreign Insurance Company, Ltd. v. Wilson Shipping Company, Ltd.</i> ... ..	[1921] 1 A.C. 188; (1920) 4 Ll.L.Rep. 337 ... ..	361
<i>British Traders' Insurance Company, Ltd. v. Monson</i> ... ..	[1964] A.L.R. 845 ... ..	1
<i>Budgett &amp; Co. v. Binnington &amp; Co.</i> ... ..	[1891] 1 Q.B. 35 ... ..	198
<i>Burrows v. Metal Box Company, Ltd.</i> ... ..	(1956) <i>Kemp &amp; Kemp, The Quantum of Damages</i> , 2nd ed. (1961), at p. 528 ... ..	145
<i>Caliph, The</i> ... ..	[1912] P. 213 ... ..	69, 320
<i>Canada Steamship Lines, Ltd. v. The King</i> ... ..	[1952] A.C. 192; [1952] 1 Lloyd's Rep. 1 ... ..	130
<i>Cantiere Navale Triestina v. Handelsvertretung der. Russ. Soz. Föd. Soviet Republik Naphtha Export</i> ... ..	[1925] 2 K.B. 172; (1925) 21 Ll.L.Rep. 204 ... ..	13, 198
<i>Capital and Counties Bank, Ltd. v. Gordon</i> ... ..	[1903] A.C. 240 ... ..	183
<i>Carlton, The</i> ... ..	[1931] P. 186; (1931) 40 Ll.L.Rep. 101 ... ..	121
<i>Carlton Steamship Company, Ltd. v. Castle Mail Packets Company, Ltd.</i> ... ..	[1898] A.C. 486 ... ..	198
<i>Carpenters' Company v. British Mutual Banking Company, Ltd.</i> ... ..	[1938] 1 K.B. 511 ... ..	525
<i>Cartledge and Others v. E. Jopling &amp; Sons, Ltd.</i> ... ..	[1963] A.C. 758; [1963] 1 Lloyd's Rep. 1 ... ..	26
<i>Cassidy v. Ministry of Health</i> ... ..	[1951] 2 K.B. 343 ... ..	26, 335
<i>Castellain v. Preston and Others</i> ... ..	(1883) 11 Q.B.D. 380 ... ..	1
<i>Chandris v. Argo Insurance Company, Ltd., and Others</i> ... ..	[1963] 2 Lloyd's Rep. 65 ... ..	361
<i>Chandris v. Isbrandtsen-Moller Company, Inc.</i> ... ..	[1951] 1 K.B. 240; (1950) 83 Ll.L.Rep. 385 ... ..	166, 533
<i>Chargeurs Reunis Compagnie Francaise de Navigation a Vapeur and Others (Ceylan) v. English &amp; American Shipping Company (Merida)</i> ... ..	(1921) 9 Ll.L.Rep. 464 ... ..	244
<i>Charlotte, The</i> ... ..	(1921) 9 Ll.L.Rep. 341 ... ..	335
<i>Chartered Bank of India, Australia, and China v. British India Steam Navigation Company, Ltd.</i> ... ..	[1909] A.C. 369 ... ..	49
<i>Cheshire v. Bailey</i> ... ..	[1905] 1 K.B. 237 ... ..	49
<i>Clarke v. National Insurance &amp; Guarantee Corporation, Ltd.</i> ... ..	[1964] 1 Q.B. 199; [1963] 2 Lloyd's Rep. 35 ... ..	49
<i>Clayards v. Dethick</i> ... ..	(1848) 12 Q.B. 439 ... ..	585
<i>Cleaver and Others v. Mutual Reserve Fund Life Association</i> ... ..	[1892] 1 Q.B. 147 ... ..	1
<i>Coggs v. Bernard</i> ... ..	(1703) 2 Ld. Raym. 909 ... ..	49
<i>Cogstad &amp; Co. v. H. Newsum, Sons and Co., Ltd.</i> ... ..	[1921] 2 A.C. 528; (1921) 8 Ll.L.Rep. 399 ... ..	13, 223

CONTENTS—*continued*

	PAGE
Prince v. Ministry of Defence — [Adm.] ... ..	354
Producer Meats (North Island), Ltd. v. Thomas Borthwick & Sons (Australia), Ltd. — [N.Z. Ct.] ... ..	130
Reederei Richard Schroder:—Grover v. — [C.A.] ... ..	179
Regent Stevedoring Company, Ltd.:—Wade v. — [Q.B.] ... ..	585
<i>Rhuys</i> , The — [Adm.] ... ..	291
Robinson v. The <i>Alnwick</i> (Owners) and the <i>Braemar</i> (Owners) — [Adm.] ... ..	69
— [C.A.]	320
Royal Mail Lines, Ltd.:—Pratt v. — [Q.B.] ... ..	43
Ryan v. New Fresh Wharf, Ltd., and Ellerman's Wilson Line, Ltd. — [Q.B.] ... ..	33
Saint Andrew's Steam Fishing Company, Ltd.:—Saul v. — [Adm.] ... ..	107
<i>St. Chad</i> , The — [Adm.] ... ..	107
Saul v. Saint Andrew's Steam Fishing Company, Ltd. — [Adm.]	107
Smith v. Alexander and Alexander — [Q.B. (Div. Ct.)] ... ..	283
Smith Coggins, Ltd.:—Nunnen v. — [C.A.] ... ..	543
Staden and Others. <i>See</i> Bowles & Sons, Ltd.	
<i>Stamatios G. Embiricos</i> , The — [Q.B. (Com. Ct.)] ... ..	574
Suisse Atlantique Société d'Armement Maritime S.A. v. N.V. Rotterdamsche Kolen Centrale — [Q.B. (Com. Ct.)] ... ..	166
— [C.A.]	533
Sullivan v. MacAndrews & Co., Ltd. — [Q.B.] ... ..	590
Taylor v. Allon — [Q.B. (Div. Ct.)] ... ..	155
<i>The Lady Gwendolen</i> — [C.A.] ... ..	335
Tomlinson (Hauliers), Ltd. v. Hepburn — [C.A.] ... ..	1
Tradax Export S.A.:—Compania Naviera Termar S.A. v. — [Q.B. (Com. Ct.)] ... ..	198
Universal Guarantee Pty., Ltd. v. National Bank of Australasia, Ltd. — [P.C.] ... ..	525
Vehicle & General Insurance Company, Ltd.:—Facer v. — [Q.B.]	113
Wade v. Regent Stevedoring Company, Ltd. — [Q.B.] ... ..	585
Walden v. Court Line, Ltd. — [Q.B.] ... ..	214

CASES CITED—*continued*

	PAGE
Hedley Byrne & Co., Ltd. v. Heller & Partners, Ltd.	[1964] A.C. 465; [1963] 1 Lloyd's Rep. 485 ... 244
Henderson v. Henderson ... ..	(1843) 3 Hare 100 ... 223
Hennell v. Ranaboldo ... ..	[1963] 1 W.L.R. 1391 ... 145
Hirschel and Meyer v. Great Eastern Railway Company	(1907) 96 L.T. 147 ... 130
Hollins v. J. Davy, Ltd. ... ..	[1963] 1 Q.B. 844 ... 49
Hope and Another v. Great Western Railway Company	[1937] 2 K.B. 130; (1937) 53 T.L.R. 399 ... 145
Hopkins v. Hopkins ... ..	[1950] 2 All E.R. 1035 ... 308
House Property Company of London, Ltd. and Baylis & Durlacher v. London County and Westminster Bank	(1915) 84 L.J. (K.B.) 1846 ... 525
Hoystead and Others v. Commissioner of Taxation	[1926] A.C. 155 ... 223
Hyman and Another v. Rose ... ..	[1912] A.C. 623 ... 145
Irvin v. Hine ... ..	[1950] 1 K.B. 555; (1949) 83 Ll.L.Rep. 162 ... 361
Jag Singh v. Toong Fong Omnibus Company, Ltd.	[1964] 1 W.L.R. 1382 ... 145
James Westoll, The ... ..	[1923] P. 94n ... 320
Johnson v. Rea, Ltd. ... ..	[1962] 1 Q.B. 373; [1961] 2 Lloyd's Rep. 243 ... 585
Karama, The ... ..	[1921] P. 76 ... 271
Kashmir, The ... ..	[1923] P. 85 ... 69, 320
Keene v. Beard ... ..	(1860) 8 C.B., N.S. 327 ... 183
King and Another v. Hoare ... ..	(1844) 13 M. & W. 494 ... 223
King Line, Ltd. v. Moxey, Savon & Co., Ltd.	(1938) 62 Ll.L.Rep. 252 ... 198
Knight and the Tabernacle Permanent Building Society, <i>In re</i>	[1892] 2 Q.B. 613 ... 13, 223
Kong Magnus, The ... ..	[1891] P. 223 ... 236
La Blanca and El Argentino ... ..	(1908) 77 L.J. (P.) 91 ... 556
La Bourgogne, The ... ..	[1899] P. 1 ... 244
La Société Anonyme de Remorquage à Hélice v. Bennetts	[1911] 1 K.B. 243 ... 244
Lalandia, The ... ..	[1933] P. 56; (1932) 44 Ll.L.Rep. 55 ... 244
Leeds Shipping Company, Ltd. v. Societe Francaise Bunge	[1958] 2 Lloyd's Rep. 127 ... 361
Legatus, The ... ..	(1856) Sw. 168; (1856) 166 E.R. 1077 ... 121
Lennard's Carrying Company, Ltd. v. Asiatic Petroleum Company, Ltd.	[1915] A.C. 705 ... 335
Levene v. Commissioners of Inland Revenue	[1928] A.C. 217 ... 308
Lewis v. Lewis ... ..	[1956] 1 All E.R. 375 ... 308
Lidgett and Another v. Secretan ... ..	(1871) L.R. 6 C.P. 616 ... 361
Llandovery Castle, The ... ..	[1920] P. 119; (1920) 2 Ll.L.Rep. 273; (C.A.) (1923) 14 Ll.L.Rep. 87 ... 69, 320
Lloyd v. Grace, Smith & Co. ... ..	[1912] A.C. 716 ... 49
Lochelly Iron and Coal Company, Ltd. v. M'Mullan	[1934] A.C. 1 ... 49, 335
London and North Western Railway Company v. Glyn	(1859) 1 E. & E. 652 ... 1
London and North Western Railway Company v. Neilson	[1922] 2 A.C. 263 ... 130
Lumley v. Gye ... ..	(1853) 2 E. & B. 216 ... 207
Luxor (Eastbourne), Ltd., and Others v. Cooper	[1941] A.C. 108 ... 297

CASES CITED—*continued*

PAGE

<i>Macgregor, The</i> ... ..	[1943] A.C. 197; (1942) 74 Ll.L.Rep. 82 ... ..	271
<i>Mackay v. Dick and Another</i> ... ..	(1881) 6 App. Cas. 251 ... ..	166
<i>MacLennan v. Segar</i> ... ..	[1917] 2 K.B. 325 ... ..	145
<i>M'Phail v. Hamilton</i> ... ..	(1878) 5 R. 1017 ... ..	556
<i>Macrae v. Macrae</i> ... ..	[1949] 2 All E.R. 34 ... ..	308
<i>Maurice v. Goldsbrough Mort &amp; Co., Ltd.</i> ...	[1939] A.C. 452; (1939) 64 Ll.L.Rep. 1 ... ..	1
<i>Mechanical and General Inventions Company, Ltd., and Lehewss v. Austin and the Austin Motor Company, Ltd.</i>	[1935] A.C. 346 ... ..	145
<i>Merchants Marine Insurance Company, Ltd. v. North of England Protecting &amp; Indemnity Association</i>	(1926) 26 Ll.L.Rep. 201 ... ..	550
<i>Midland Bank, Ltd. v. R. V. Harris, Ltd.</i> ...	[1963] 1 W.L.R. 1021 ... ..	183
<i>Mintz v. Silverton</i> ... ..	(1920) 36 T.L.R. 399 ... ..	49
<i>Mitchell and Others v. Lancashire and Yorkshire Railway Company</i>	(1875) L.R. 10 Q.B. 256 ... ..	130
<i>Mona Oil Equipment and Supply Company, Ltd. v. Rhodesia Railways, Ltd.</i>	(1949) 83 Ll.L.Rep. 178 ... ..	297
<i>Morey v. Woodfield (No. 2)</i> ... ..	[1964] 1 W.L.R. 16 ... ..	145
<i>Morgan v. Morgan</i> ... ..	(1869) 1 P. & D. 644 ... ..	145
<i>Nelson &amp; Sons, Ltd. v. Nelson Line, Liverpool, Ltd.</i>	[1907] 2 K.B. 705 ... ..	574
<i>New Brunswick Railway Company v. British and French Trust Corporation, Ltd.</i>	[1939] A.C. 1 ... ..	223
<i>Newsholme Brothers v. Road Transport and General Insurance Company, Ltd.</i>	[1929] 2 K.B. 356; (1929) 34 Ll.L.Rep. 247 ... ..	113
<i>Norman, The</i> ... ..	[1960] 1 Lloyd's Rep. 1 ... ..	335
<i>North River Freighters, Ltd. v. H.E. President of India (The Radnor)</i>	[1956] 1 Q.B. 333; [1955] 2 Lloyd's Rep. 668 ... ..	198, 574
<i>Northern Fishing Company (Hull), Ltd. v. Eddom and Others (The Norman)</i>	[1960] 1 Lloyd's Rep. 1 ... ..	335
<i>Okura &amp; Co., Ltd. v. Forsbacka Jernverks Aktiebolag</i>	[1914] 1 K.B. 715 ... ..	244
<i>Olley v. Marlborough Court, Ltd.</i> ... ..	[1949] 1 K.B. 532 ... ..	130
<i>Ormerod and Others v. Todmorden Joint-Stock Mill Company, Ltd.</i>	(1882) 8 Q.B.D. 664 ... ..	145
<i>Osenton &amp; Co. v. Johnston</i> ... ..	[1942] A.C. 130 ... ..	145
<i>Overseas Tankship (U.K.), Ltd. v. Morts Dock &amp; Engineering Company, Ltd.</i>	[1961] A.C. 388; [1961] 1 Lloyd's Rep. 1 ... ..	121
<i>Parker v. Winlow</i> ... ..	(1857) 7 E. & B. 942 ... ..	198
<i>Pease v. George</i> ... ..	[1960] 1 W.L.R. 427 ... ..	145
<i>Peter Benoit, The</i> ... ..	(1915) 114 L.T. 147; (1915) 13 Asp. Mar. Cas. 203 ... ..	271
<i>Polpen Shipping Company, Ltd. v. Commercial Union Assurance Company, Ltd.</i>	[1943] 1 K.B. 161; (1942) 74 Ll.L.Rep. 157 ... ..	550
<i>Princesse Clémentine, The</i> ... ..	[1897] P. 18 ... ..	244
<i>Prins Bernhard, The</i> ... ..	[1963] 2 Lloyd's Rep. 236 ... ..	244
<i>Pteroti Compania Naviera S.A. v. National Coal Board</i>	[1958] 1 Q.B. 469; [1958] 1 Lloyd's Rep. 245 ... ..	574
<i>Radcliffe Steamship Company, Ltd., and Another v. Exporthele</i> ... ..	(1939) 64 Ll.L.Rep. 250 ... ..	198
<i>Radiant, The</i> ... ..	[1958] 2 Lloyd's Rep. 596 ... ..	335
<i>Reardon Smith Line, Ltd. v. Ministry of Agriculture, Fisheries and Food</i>	[1963] A.C. 691; [1963] 1 Lloyd's Rep. 12 ... ..	574
<i>Rederi Aktiebolaget Transatlantic v. Board of Trade</i>	(1924) 30 Com. Cas. 117; (1924) 20 Ll.L.Rep. 241 ... ..	13, 223

## CASES CITED—continued

	PAGE
<i>Rex v. Wilkes</i> ... .. (1770) 4 Burr. 2527 ... .. 145	
<i>Reynolds v. Boston Deep Sea Fishing &amp; Ice Company, Ltd.</i> ... .. (1922) 38 T.L.R. 429; (1922) 10 L.L.Rep. 407 ... .. 130	
<i>Rickards v. Forestal Land, Timber and Railways Company, Ltd.</i> ... .. [1942] A.C. 50 ... .. 361	
<i>Riverstone Meat Company Pty., Ltd. v. Lancashire Shipping Company, Ltd.</i> ... .. [1961] A.C. 807; [1961] 1 Lloyd's Rep. 57 ... .. 49	
<i>Robertson v. Petros M. Nomikos, Ltd.</i> ... .. [1939] A.C. 371; (1939) 64 L.L.Rep. 45 ... .. 361	
<i>Robinson v. Ewer</i> ... .. (1786) 1 T.R. 182; (1786) 99 E.R. 1111 ... .. 361	
<i>Roland-Linie Schiffahrt G.m.b.H. v. Spillers Ltd. and Others (The Werrastein)</i> ... .. [1957] 1 Q.B. 109; [1956] 2 Lloyd's Rep. 211 ... .. 198, 574	
<i>Rose v. Hyman</i> ... .. [1911] 2 K.B. 234 ... .. 145	
<i>Roy v. Hamiltons &amp; Co.</i> ... .. (1867) 5 M. 573 ... .. 556	
<i>Rudd v. Elder Dempster &amp; Co., Ltd.</i> ... .. [1933] 1 K.B. 566; (1932) 44 L.L.Rep. 356 ... .. 335	
<i>Rushton v. National Coal Board</i> ... .. [1953] 1 Q.B. 495 ... .. 145	
<i>Rutter v. Palmer</i> ... .. [1922] 2 K.B. 87 ... .. 130	
<i>Saccharin Corporation, Ltd. v. Chemische Fabrik von Heyden Aktiengesellschaft</i> ... .. [1911] 2 K.B. 516 ... .. 244	
<i>St. Charles, The</i> ... .. (1927) 29 L.L.Rep. 312; (1927) 17 Asp. Mar. Law Cas. 399 ... .. 236	
<i>St. Merriel, The</i> ... .. [1963] P. 247; [1963] 1 Lloyd's Rep. 63 ... .. 565	
<i>Schebsman, In re</i> ... .. [1944] 1 Ch. 83 ... .. 1	
<i>Scott v. Musial</i> ... .. [1959] 2 Q.B. 429 ... .. 145	
<i>Sharp v. Wakefield and Others</i> ... .. [1891] A.C. 173 ... .. 145	
<i>Shaw v. Great Western Railway Company</i> ... .. [1894] 1 Q.B. 373 ... .. 49	
<i>Sims v. William Howard &amp; Sons, Ltd.</i> ... .. [1964] 2 W.L.R. 794 ... .. 145	
<i>Sinason-Teicher Inter American Grain Corporation v. Oilcakes &amp; Oilseeds Trading Company, Ltd.</i> ... .. [1954] 1 Lloyd's Rep. 376 ... .. 13	
<i>Sinclair's Life Policy, In re</i> ... .. [1938] 1 Ch. 799 ... .. 1	
<i>Smeaton, Hanscomb &amp; Co., Ltd. v. Sassoon I. Setty, Son &amp; Co.</i> ... .. [1953] 2 Lloyd's Rep. 580; [1953] 1 W.L.R. 1468 ... .. 49	
<i>Sociedad Financiera de Bienes Raices S.A. v. Agrimpex Hungarian Trading Company for Agricultural Products (The Aello)</i> ... .. [1961] A.C. 135; [1960] 1 Lloyd's Rep. 623 ... .. 198	
<i>Société Co-operative Suisse des Céréales et Matières Fourragères v. La Plata Cereal Company, S.A.</i> ... .. (1947) 80 L.L.Rep. 530 ... .. 13	
<i>Spurling, Ltd. v. Bradshaw</i> ... .. [1956] 1 Lloyd's Rep. 392; [1956] 1 W.L.R. 461 ... .. 49, 130	
<i>Standard Oil Company of New York v. Clan Line Steamers, Ltd.</i> ... .. [1924] A.C. 100; (1923) 17 L.L.Rep. 120 ... .. 335	
<i>Steamship New Orleans Company v. London and Provincial Marine and General Insurance Company</i> ... .. [1909] 1 K.B. 943 ... .. 361	
<i>Steel et al. v. State Line Steamship Company</i> ... .. (1877) 3 App. Cas. 72 ... .. 49	
<i>Stewart v. Steel</i> ... .. (1842) L.J. (C.P.) 155 ... .. 361	
<i>Stransky v. Stransky</i> ... .. [1954] 2 All E.R. 536 ... .. 308	
<i>Stratford &amp; Son, Ltd. v. Lindley and Watson</i> ... .. [1964] 2 Lloyd's Rep. 133; [1964] 3 All E.R. 1 ... .. 207	
<i>Svendsen and Others v. Wallace Brothers</i> ... .. (1884) 13 Q.B.D. 69; (H.L.) (1885) 10 App. Cas. 404 ... .. 361	
<i>Sze Hai Tong Bank, Ltd. v. Rambler Cycle Company, Ltd.</i> ... .. [1959] A.C. 576; [1959] 2 Lloyd's Rep. 114 ... .. 49	
<i>Tagus, The</i> ... .. [1903] P. 44 ... .. 565	
<i>Tattersall v. National Steamship Company, Ltd.</i> ... .. (1884) 12 Q.B.D. 297 ... .. 49	
<i>Thoday v. Thoday</i> ... .. [1964] P. 181; [1964] 2 W.L.R. 371 ... .. 223	
<i>Thomson &amp; Co., Ltd. v. Deakin and Others</i> ... .. [1952] 1 Ch. 646 ... .. 207	



## CASES CITED—continued

PAGE

<i>Tolten</i> , The ... ..	[1946] P. 135; (1946) 79 Ll.L.Rep. 349 ... ..	565
<i>Trickett v. Queensland Insurance Company, Ltd., and Others</i> ... ..	[1936] A.C. 159; (1935) 53 Ll.L.Rep. 225 ... ..	49
<i>Truculent</i> , The ... ..	[1952] P. 1; [1951] 2 Lloyd's Rep. 308 ... ..	335
<i>Tyne Improvement Commissioners v. Arment Anversois S/A (The Brabo)</i> ... ..	[1949] A.C. 326; (1948) 82 Ll.L.Rep. 251 ... ..	244
<i>Underwood, Ltd. v. Bank of Liverpool and Martins</i> ... ..	[1924] 1 K.B. 775 ... ..	183, 525
<i>Union Bank of London v. Lenanton</i> ... ..	(1878) 3 C.P.D. 243 ... ..	550
<i>United Africa Company, Ltd. v. Owode</i> ... ..	[1955] A.C. 130; [1954] 2 Lloyd's Rep. 607 ... ..	49
<i>United Africa Company, Ltd. v. Tolten (Owners)</i> ... ..	[1946] P. 135; (1946) 79 Ll.L.Rep. 349 ... ..	565
<i>Universal Cargo Carriers Corporation v. Pedro Citati</i> ... ..	[1957] 1 Lloyd's Rep. 174 ... ..	13
<i>Vadne</i> , The ... ..	[1961] 2 Lloyd's Rep. 480 ... ..	69, 320
<i>Verena</i> , The ... ..	[1961] 2 Lloyd's Rep. 127 ... ..	271
<i>Wagon Mound</i> , The ... ..	[1961] A.C. 388; [1961] 1 Lloyd's Rep. 1 ... ..	121
<i>Waldon v. War Office</i> ... ..	[1956] 1 W.L.R. 51 ... ..	145
<i>Ward v. James</i> ... ..	[1965] 1 Lloyd's Rep. 145 ... ..	181
<i>Ware and de Freville, Ltd. v. Motor Trade Association and Others</i> ... ..	[1921] 3 K.B. 40 ... ..	207
<i>Warren v. King and Another</i> ... ..	[1964] 1 W.L.R. 1 ... ..	145
<i>Waters and Steel v. Monarch Fire and Life Assurance Company</i> ... ..	(1856) 5 E. & B. 870 ... ..	1
<i>Wells and Another (Paupers) v. Owners of the Gas Float Whitton No. 2</i> ... ..	[1897] A.C. 337 ... ..	550
<i>West &amp; Son, Ltd., and Another v. Shephard Whipps v. Powell Duffryn Engineering Company, Ltd.</i> ... ..	[1963] 2 W.L.R. 1359 ... .. (unreported) ... ..	145 145
<i>White v. John Warrick &amp; Co., Ltd.</i> ... ..	[1953] 2 All E.R. 1021 ... ..	130
<i>White and Others v. Kuzych</i> ... ..	[1951] A.C. 585 ... ..	597
<i>Wilkins and Elkington, Ltd. v. Milton</i> ... ..	(1916) 32 T.L.R. 618 ... ..	297
<i>Williamina</i> , The ... ..	(1878) L.R. 3 P.D. 97 ... ..	121
<i>Williams v. Curzon Syndicate, Ltd.</i> ... ..	(1920) 35 T.L.R. 475 ... ..	49
<i>Wilson v. Darling Island Stevedoring and Lighterage Company, Ltd.</i> ... ..	[1956] 1 Lloyd's Rep. 346 ... ..	130
<i>Wilsons &amp; Clyde Coal Company, Ltd. v. English Wise v. Kaye and Another</i> ... ..	[1938] A.C. 57 ... ..	49
<i>Witt, In re</i> ... ..	[1962] 1 Q.B. 638 ... ..	145
<i>Woolmer v. Delmer Price, Ltd.</i> ... ..	(1876) 2 Ch.D. 489 ... .. [1955] 1 All E.R. 377 ... ..	297 130
<i>Yero Carras (Owners) v. London &amp; Scottish Assurance Corporation, Ltd.</i> ... ..	[1936] 1 K.B. 291; (1935) 52 Ll.L.Rep. 34; (C.A.) (1935) 53 Ll.L.Rep. 131 ... ..	361
<i>Yorkshire Dale Steamship Company, Ltd. v. Minister of War Transport</i> ... ..	[1942] A.C. 691; (1942) 73 Ll.L.Rep. 1 ... ..	121
<i>Young, In re</i> ... ..	(1875) 1 Tax Cas. 57 ... ..	308
<i>Yuille v. B. &amp; B. Fisheries (Leigh), Ltd., and Bates (The Radiant)</i> ... ..	[1958] 2 Lloyd's Rep. 596 ... ..	335
<i>Yuri Maru</i> , The ... ..	[1927] A.C. 906; (1927) 28 Ll.L.Rep. 221 ... ..	556
<i>Zelo</i> , The ... ..	[1922] P. 9 ... ..	244
<i>Zigurds</i> , The ... ..	[1932] P. 113; (1932) 45 Ll.L.Rep. 1 ... ..	565

**STATUTES CONSIDERED.**

	PAGE
UNITED KINGDOM—	
ADMINISTRATION OF JUSTICE ACT, 1933	
Sect. 6 ... ..	145
ADMINISTRATION OF JUSTICE ACT, 1956	
Sect. 4 ... ..	244
ARBITRATION ACT, 1950	
Sect. 21 ... ..	223
Sect. 21 (1) ... ..	13
BILLS OF EXCHANGE ACT, 1882	
Sect. 31 (4) ... ..	183
CHEQUES ACT, 1957	
Sect. 2 ... ..	183
COUNTY COURTS ACT, 1959	
Sect. 47 (3) ... ..	195
LAW REFORM (LIMITATION OF ACTIONS, &c.) ACT, 1954	... 69, 320
LIMITATION ACT, 1963 ... ..	320
MARINE INSURANCE ACT, 1906	
Sect. 69 ... ..	361
MARITIME CONVENTIONS ACT, 1911	
Sect. 1 ... ..	271
Sect. 8 ... ..	69, 244, 320
MERCHANT SHIPPING ACT, 1894	
Sect. 30 ... ..	556
Sect. 419 ... ..	335
Sect. 503 ... ..	335
PATENTS ACT, 1949	
Sect. 30 ... ..	604
PURCHASE TAX ACT, 1963 ... ..	550
ROAD TRAFFIC ACT, 1960	
Sect. 201 ... ..	155
STAMP ACT, 1891	
Sect. 54 ... ..	313
Sect. 59 ... ..	313

NEW ZEALAND—

MEAT ACT, 1939	
Sect. 33 ... ..	130

## CONTENTS

NOTE:—These Reports should be cited as  
“[1965] 1 Lloyd's Rep.”

	PAGE
<i>Acrux</i> , The — [Adm.] ... ..	565
<i>Aerolineas Argentinas</i> , and Others:— <i>Boryk v.</i> — [U.S. Ct.] ...	358
<i>Alexander and Alexander</i> :— <i>Smith v.</i> — [Q.B. (Div. Ct.)] ...	283
<i>Allon</i> :— <i>Taylor v.</i> — [Q.B. (Div. Ct.)] ... ..	155
<i>Alnwick</i> , The — [Adm.] ... ..	69
———— [C.A.] ... ..	320
<i>Atle Stevedoring, Ltd.</i> :— <i>Wilkins v.</i> — [Q.B.] ... ..	94
<i>Australian Coastal Shipping Commission</i> :— <i>The Walumba</i> (Owners) <i>v.</i> — [Aust. Ct.] ... ..	121
<i>Autair International Airways, Ltd. v. Claydon Aviation, Ltd.</i> — [Q.B. (Com. Ct.)] ... ..	74
<i>Baxter, Hoare &amp; Co., Ltd.</i> :— <i>S. Zimmerman &amp; Son (Merchants),</i> <i>Ltd. v.</i> — [Q.B.] ... ..	88
<i>Beneficial Finance Corporation, Ltd. v. Price</i> — [Aust. Ct.] ...	556
<i>Borthwick &amp; Sons (Australia), Ltd.</i> :— <i>Producer Meats (North</i> <i>Island), Ltd.</i> — [N.Z. Ct.] ... ..	130
<i>Boryk v. de Havilland Aircraft Company, Ltd., Aerolineas</i> <i>Argentinas, and de Havilland Aircraft, Inc.</i> — [U.S. Ct.]	358
<i>Bose v. Cayzer, Irvine &amp; Co., Ltd., and Clan Line Steamers, Ltd.</i> — [Q.B.] ... ..	159
<i>Bowles &amp; Sons, Ltd., and Metropolitan Sand and Ballast Company,</i> <i>Ltd. v. Lindley, Watson, Staden and Watermen, Lightermen,</i> <i>Tugmen &amp; Bargemen's Union</i> — [Q.B.] ... ..	207
<i>Brazier v. Ministry of Defence</i> — [Q.B.] ... ..	26
<i>British Aviator, The</i> — [C.A.] ... ..	271
<i>Carter (Fine Worsteds), Ltd. v. Hanson Haulage (Leeds), Ltd.</i> — [C.A.] ... ..	49
<i>Cayzer, Irvine &amp; Co., Ltd., and Another</i> :— <i>Bose v.</i> — [Q.B.] ...	159
<i>Clan Line Steamers, Ltd., and Another</i> :— <i>Bose v.</i> — [Q.B.] ...	159
<i>Clarke v. The Insurance Office of Australia, Ltd.</i> — [Aust. Ct.]	308
<i>Claydon Aviation, Ltd.</i> :— <i>Autair International Airways, Ltd. v.</i> — [Q.B. (Com. Ct.)] ... ..	74

CONTENTS—*continued*

	PAGE
Commissioners of Customs and Excise:—Dependable Marine Company, Ltd. v. — [Q.B.] ... ..	550
Commissioners of Inland Revenue:—Wm. Cory & Son, Ltd. v. — [H.L.] ... ..	313
Compania Naviera Termar S.A. v. Tradax Export S.A. — [Q.B. (Com. Ct.)] ... ..	198
<i>Conet</i> , The — [Adm.] ... ..	195
Cory & Son, Ltd. v. Commissioners of Inland Revenue — [H.L.] ... ..	313
Court Line, Ltd.:—Walden v. — [Q.B.] ... ..	214
Crow's Transport, Ltd. v. Phoenix Assurance Company, Ltd. — [C.A.] ... ..	139
<i>Dayspring</i> , The — [Adm.] ... ..	103
de Havilland Aircraft Company, Ltd., and Others:—Boryk v. — [U.S. Ct.] ... ..	358
de Havilland Aircraft, Inc., and Others:—Boryk v. — [U.S. Ct.]	358
Dependable Marine Company, Ltd. v. Commissioners of Customs and Excise — [Q.B.] ... ..	550
Edina Compania Naviera S.A.:—President of India v. — [Q.B. (Com. Ct.)] ... ..	574
Ellerman's Wilson Line, Ltd., and Another:—Ryan v. — [Q.B.]	33
Exportchleb:—Fidelitas Shipping Company, Ltd. v. — [Q.B. (Com. Ct.)] ... ..	13
— [C.A.]	223
Facer v. Vehicle & General Insurance Company, Ltd. — [Q.B.]	113
<i>Fairwind</i> , The — [Adm.] ... ..	548
Fidelitas Shipping Company, Ltd. v. V/O Exportchleb — [Q.B. (Com. Ct.)] ... ..	13
— [C.A.]	223
Grover v. Reederei Richard Schroder — [C.A.] ... ..	179
Hanson Haulage (Leeds), Ltd.:—John Carter (Fine Worsteds), Ltd. v. — [C.A.] ... ..	49
Harland & Wolff, Ltd.:—Hodges v. — [C.A.] ... ..	181
Helmville, Ltd. v. Yorkshire Insurance Company, Ltd. — [Q.B. (Com. Ct.)] ... ..	361
<i>Henfield</i> , The — [Adm.] ... ..	285
Hepburn:—A. Tomlinson (Hauliers), Ltd. v. — [C.A.] ... ..	1
Hodges v. Harland & Wolff, Ltd. — [C.A.] ... ..	181

CONTENTS—*continued*

	PAGE
Insurance Office of Australia, Ltd.:—Clarke v. — [Aust. Ct.]	308
James:—Ward v. — [C.A.]      ...      ...      ...      ...	145
<i>Lady Gwendolen, The</i> — [C.A.]      ...      ...      ...      ...	335
Langley, Beldon & Gaunt, Ltd. v. Morley — [Q.B. (Com. Ct.)]	297
Lindley and Others:—F. Bowles & Sons, Ltd. and Another v. — [Q.B.]      ...      ...      ...      ...      ...	207
MacAndrews & Co., Ltd.:—Sullivan v. — [Q.B.]      ...      ...	590
<i>Medina Princess, The</i> — [Q.B. (Com. Ct.)]      ...      ...      ...	361
Metropolitan Sand and Ballast Company, Ltd., and Another v. Lindley and Others — [Q.B.]      ...      ...      ...      ...	207
Ministry of Defence:—Brazier v. — [Q.B.]      ...      ...      ...	26
—:—Prince v. — [Adm.]      ...      ...      ...	354
Montrose Canned Foods, Ltd. v. Eric Wells (Merchants), Ltd. — [Q.B.]      ...      ...      ...      ...      ...	597
Morley:—Langley, Beldon & Gaunt, Ltd. v. — [Q.B. (Com. Ct.)]	297
N.V. Rotterdamsche Kolen Centrale:—Suisse Atlantique Société d'Armement Maritime S.A. v. — [Q.B. (Com. Ct.)]      ...	166
— [C.A.]	533
<i>Nassau, The</i> — [Adm.]      ...      ...      ...      ...      ...	236
National Bank of Australasia, Ltd.:—Universal Guarantee Pty., Ltd. v. — [P.C.]      ...      ...      ...      ...      ...	525
New Fresh Wharf, Ltd., and Another:—Ryan v. — [Q.B.]      ...	33
Nunnen v. A. E. Smith Coggins, Ltd. — [C.A.]      ...      ...	543
Phœnix Assurance Company, Ltd.:—Crow's Transport, Ltd. v. — [C.A.]      ...      ...      ...      ...      ...	139
Practice Direction — [H.L.]      ...      ...      ...      ...      ...	563
— [Q.B.]      ...      ...      ...      ...      ...	48
— [Q.B.]      ...      ...      ...      ...      ...	222
— [Q.B.]      ...      ...      ...      ...      ...	563
— [Ch.]      ...      ...      ...      ...      ...	604
Practice Note — [C.A.]      ...      ...      ...      ...      ...	564
<i>Praia da Adraga, The</i> — [Adm.]      ...      ...      ...      ...	354
Pratt v. Royal Mail Lines, Ltd. — [Q.B.]      ...      ...      ...	43
President of India v. Edina Compania Naviera S.A. (The <i>Stamatios G. Embiricos</i> ) — [Q.B. (Com. Ct.)]      ...      ...	574
Price:—Beneficial Finance Corporation, Ltd. v. — [Aust. Ct.]	556

## CASES CITED—continued

PAGE

Cohen, Sons & Co. v. Standard Marine Insurance Company, Ltd.	(1925) 21 Ll.L.Rep. 30; (1924) 30 Com. Cas. 139 ...	361
Colorado, The ... ..	[1923] P. 102; (1923) 14 Ll.L.Rep. 251 ...	565
Commissioners of Inland Revenue v. Lysaght	[1928] A.C. 234 ...	308
Compagnie Primera de Navagazona Panama v. Compania Arrendataria de Monopolio de Petroleos S.A.	[1940] 1 K.B. 362; (1939) 65 Ll.L.Rep. 7 ...	166, 533
Compania Crystal De Vapores of Panama v. Herman & Mohatta (India), Ltd.	[1958] 2 Q.B. 196; [1958] 1 Lloyd's Rep. 616 ...	198
Connelly v. Director of Public Prosecutions ...	[1964] 2 W.L.R. 1145 ...	223
Court Line, Ltd. v. The King ... ..	(1945) 78 Ll.L.Rep. 390 ...	361
Crispin, The ... ..	(1929) 34 Ll.L.Rep. 400; (C.A.) (1929) 35 Ll.L.Rep. 197 ...	236
Crowley and Others v. Cohen ... ..	(1832) 3 B. & A. 478 ...	1
Dahl v. Nelson, Donkin, and Others ... ..	(1881) 6 App. Cas. 38 ...	121
de Vaux v. Salvador ... ..	(1836) 4 A. & E. 420; (1836) 111 E.R. 845 ...	361
Dolbey v. Goodwin ... ..	[1955] 1 W.L.R. 553 ...	145
Donoghue v. Stevenson ... ..	[1932] A.C. 562 ...	244
Dunlop Pneumatic Tyre Company, Ltd. v. Actien-Gesellschaft für Motor und Motorfahrzeugbau vorm. Cudell & Co.	[1902] 1 K.B. 342 ...	244
Egg v. Barnett ... ..	(1800) 3 Esp. 196 ...	183
Empire Jamaica, The ... ..	[1957] A.C. 386; [1956] 2 Lloyd's Rep. 119 ...	335
Engelbach's Estate, <i>In re</i> ... ..	[1924] 2 Ch. 348 ...	1
Ethel Radcliffe Steamship Company, Ltd. v. W. & R. Barnett, Ltd.	(1926) 24 Ll.L.Rep. 277; (1926) 31 Com. Cas. 222 ...	166
Evans v. Bartlam ... ..	[1937] A.C. 473 ...	145
Everard & Sons, Ltd. v. London and Thames Haven Oil Wharves, Ltd., and Others (The <i>Anonity</i> )	[1961] 2 Lloyd's Rep. 117 ...	335
Every v. Miles ... ..	(unreported) ...	145
Fairplay XIV, The ... ..	[1939] P. 57; (1938) 62 Ll.L.Rep. 108 ...	320
Farden and Another v. Richter ... ..	(1889) 23 Q.B.D. 124 ...	145
Field Steamship Company, Ltd. v. Burr ...	[1898] 1 Q.B. 821; (C.A.) [1899] 1 Q.B. 579 ...	361
Firedog, The ... ..	(1950) 84 Ll.L.Rep. 496 ...	103
Ford v. Blurton ... ..	(1922) 38 T.L.R. 801 ...	145
Gapp v. Bond ... ..	(1887) 19 Q.B.D. 200 ...	550
Gee-Whiz, The ... ..	[1951] 1 Lloyd's Rep. 145 ...	565
Government of Ceylon v. Société Franco-Tunisienne d'Armement-Tunis (The <i>Massalia</i> )	[1962] 2 Q.B. 416; [1960] 2 Lloyd's Rep. 352 ...	198, 574
Grant v. Anderson & Co. ... ..	[1892] 1 Q.B. 108 ...	244
Green v. Russell ... ..	[1959] 2 Q.B. 226 ...	1
Grimshaw v. Dunbar ... ..	[1953] 1 Q.B. 408 ...	145
Gwyn v. Neath Canal Navigation Company	(1868) L.R. 3 Ex. 209 ...	74
Hagen, The ... ..	[1908] P. 189 ...	244
Hamel and Another v. Peninsular and Oriental Steam Navigation Company	[1908] 2 K.B. 298 ...	361

CONTENTS—*continued*

	PAGE
<i>Walumba</i> , The (Owners) v. Australian Coastal Shipping Commission — [Aust. Ct.] ... ..	121
Ward v. James — [C.A.] ... ..	145
Watermen, Lightermen, Tugmen & Bargemen's Union and Others. See Bowles & Sons, Ltd.	
Watson and Others. See Bowles & Sons, Ltd.	
Wells (Merchants), Ltd.:—Montrose Canned Foods, Ltd. v. — [Q.B.] ... ..	597
Westminster Bank, Ltd. v. Zang — [C.A.] ... ..	183
<i>Westport</i> , The (No. 1) — [Adm.] ... ..	547
— (No. 2) — [Adm.] ... ..	549
Wilkins v. Atle Stevedoring, Ltd. — [Q.B.] ... ..	94
<i>World Harmony</i> , The — [Adm.] ... ..	244
<i>York</i> , The — [Adm.] ... ..	97
Yorkshire Insurance Company, Ltd.:— Helmville, Ltd. v. — [Q.B. (Com. Ct.)] ... ..	361
Zang:—Westminster Bank, Ltd. v. — [C.A.] ... ..	183
Zimmerman & Son (Merchants), Ltd. v. Baxter, Hoare & Co., Ltd. — [Q.B.] ... ..	88

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CORRIGENDUM

THE "WORLD HARMONY", [1965] 1  
Lloyd's Rep. 244 (Part 6).

Line 22 of headnote should read:

"Bosporus on Dec. 14, 1960—*Tarsus* off"

# LLOYD'S LIST LAW REPORTS

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[1965] VOL. 1]

FRIDAY, FEBRUARY 12, 1965

[PART 1

## COURT OF APPEAL

Nov. 30, Dec. 1, 2, 3, 4, 1964

A. TOMLINSON (HAULIERS), LTD.  
v. HEPBURN

Before Lord Justice SELLERS, Lord Justice  
PEARSON and Lord Justice RUSSELL

**Insurance — Goods in transit — Insurance  
effected by road carriers—Goods stolen  
— Whether goods off risk — Whether  
insurance on carriers' legal liability or on  
goods—Bailors' interest in policy.**

Policy effected by plaintiff road carriers  
with defendant insurer providing:

Assured: A. Tomlinson (Hauliers) Ltd.,  
of Nottingham.

12 months @ Midnight 28th August,  
1960

On: Tobacco &/or Manufactured  
Goods &/or Machinery the Property of  
[I.T.Co.] including General Merchandise  
whilst being carried &/or in transit  
anywhere in the United Kingdom  
including loading and unloading.  
Including risk during halts &/or whilst  
garaged &/or elsewhere overnight.

Conditions: All Risks of loss or  
damage however arising. Including  
strikes, riots, civil commotions and  
malicious damage risks.

Excluding war and civil war as per  
Policy.

Not subject to average.

Excluding deterioration through delay  
and loss or [sic] market etc.

Machinery subject to Institute  
Replacement Clause.

Plaintiffs' lorries carrying cigarettes from  
Nottingham to London premises of  
I.T.Co., having arrived in the evening,  
left overnight in I.T.Co.'s London

premises, for unloading on following  
morning by I.T.Co.'s employees assisted  
by drivers—Lorries and cigarettes stolen  
—Claim by plaintiffs (at expense of, and  
for account of, I.T.Co.) to recover under  
policy — Denial of liability by insurer,  
alleging (1) that tobacco was off risk at  
time of loss; and (2) (a) that insurance  
was only against plaintiffs' legal liability;  
and that, in the circumstances, there was  
no legal liability on plaintiffs to I.T.Co.;  
and (b) that I.T.Co. had no interest in  
policy—Evidence as to intentions of plain-  
tiffs and I.T.Co. as to insurance arrange-  
ments.

—Held, by ROSKILL, J., (1) that  
cigarettes were covered under policy until  
unloading was completed; (2) (a) that,  
from the language of the policy, it was  
a policy on goods and not against legal  
liability; and (b) that plaintiffs were  
intended to be trustees of benefit of policy  
and trustees of any recovery effected under  
it for I.T.Co.; and that, therefore, plaintiffs  
could recover although they were not  
legally liable as bailees to I.T.Co. for the  
loss—Judgment for plaintiffs.

—Appeal by insurer dismissed by  
C.A. (SELLERS, PEARSON and RUSSELL,  
L.JJ.).

Per PEARSON, L.J. (at p. 8): The distin-  
guishing feature of the present case . . . is  
that there were two persons, bailor and  
bailee, having concurrent interests in the  
same goods, so that it would be reasonable  
and natural and economical for one of  
them to insure for the benefit of both. In  
the sphere of insurance on goods, it would  
be unrealistic and productive of injustice  
to require from the party taking out the  
insurance an express declaration or  
conscious assumption of trusteeship. The  
existence of the intention is sufficient.

Per RUSSELL, L.J. (at p. 11): Taking all  
these matters into consideration, I have  
no doubt at all that it was the intention  
of the plaintiffs to insure the proprietary  
interest in the goods for the benefit of  
[I.T.Co.].



[1965] VOL. 1]

**A. Tomlinson (Hauliers), Ltd. v. Hepburn**

What in law is the effect of such an insurance with such an intention? We were referred to a number of authorities on this matter. I have already indicated that insurance by a bailee or carrier on goods *simpliciter* will not be construed as extending to the proprietary interest of another. But there is authority which in my judgment establishes that a commercial trustee—that is, a bailee—is capable in law of effecting an insurance on goods of another beyond his personal interest and extending to the full proprietary interest in the goods, and of recovering the value of that proprietary interest accordingly: that for this purpose it is not necessary that he should insure either as agent or expressly as trustee for that other: and, that he will be accountable to that other for his successful recovery. I do not consider that this can be done by the mere existence of an intention in the mind of the assured: I do not think that the statements of Lord Justice Bowen in *Castellain v. Preston and Others*, (1883) 11 Q.B.D., at p. 398, are to be taken at their full apparent width. I think there must be some indication in the form of the policy of an intention to insure the proprietary interest—though it is proper to remark that an equivalent burden may be thrown on an insurer under a personal liability policy if the contractual relationship between bailee and goods owner is such as to impose on the former absolute liability for loss of or damage to the goods.

The following cases were referred to:

- British Traders' Insurance Company Ltd. v. Monson, [1964] A.L.R. 845;  
 Castellain v. Preston and Others, (1883) 11 Q.B.D. 380;  
 Cleaver and Others v. Mutual Reserve Fund Life Association, [1892] 1 Q.B. 147;  
 Crowley and Others v. Cohen, (1832) 3 B. & A. 478;  
 Engelbach's Estate, *In re*, [1924] 2 Ch. 348;  
 Green v. Russell, [1959] 2 Q.B. 226;  
 London and North Western Railway Company v. Glyn, (1859) 1 E. & E. 652;  
 Maurice v. Goldsbrough Mort & Co., Ltd., [1939] A.C. 452; (1939) 64 Ll.L.Rep. 1;  
 Schebsman, *In re*, [1944] 1 Ch. 83;  
 Sinclair's Life Policy, *In re*, [1938] 1 Ch. 799;  
 Waters and Steel v. Monarch Fire and Life Assurance Company, (1856) 5 E. & B. 870.

This was an appeal by the defendant, Mr. Dudley Frankland Hepburn, a representative Lloyd's underwriter, from a decision by Mr. Justice Roskill ([1964] 1 Lloyd's Rep. 416) allowing a claim by the plaintiffs, A. Tomlinson (Hauliers), Ltd., against the defendant for £136 5s. 10d., being his proportion of the sum of £9251 8s. 6d. which the plaintiffs contended was payable under a Lloyd's All Risks Policy (Form J).

The facts of the case were that the plaintiffs, who were road hauliers, carried cigarettes for the John Player & Sons branch of the Imperial Tobacco Company (of Great Britain and Ireland), Ltd. The plaintiffs effected a Lloyd's All Risks policy, underwritten by (*inter alios*) the defendant, which provided:

Assured: A. Tomlinson (Hauliers) Ltd., of Nottingham.

12 months @ Midnight 28th August, 1960

On: Tobacco &/or Manufactured Goods &/or Machinery the Property of the Imperial Tobacco Company (of Great Britain & Ireland) Ltd., including General Merchandise whilst being carried &/or in transit anywhere in the United Kingdom including loading and unloading. Including risk during halts &/or whilst garaged &/or elsewhere overnight.

Conditions: All Risks of loss or damage however arising. Including strikes, riots, civil commotions and malicious damage risks.

Excluding war and civil war as per Policy.

Not subject to average.

Excluding deterioration through delay and loss or [*sic*] market etc.

Machinery subject to Institute Replacement Clause.

On the evening of May 24, 1961, two of the plaintiffs' lorries, carrying cigarettes from Nottingham, arrived at the London premises of the Imperial Tobacco Company at City Road. The lorries were left at those premises overnight for unloading on the following morning by the employees of the Imperial Tobacco Company, assisted by the lorry drivers. During that night the lorries and cigarettes were stolen.

The plaintiffs brought an action against the defendant under the policy, at the expense and for the account of the Imperial Tobacco Company, in respect of the