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* Erroneously reported as Peace & Co.

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[By SUBSCRIPTION

HOUSE OF LORDS.

July 9, 10, 11, 12, 1945.

TEMPLE STEAMSHIP COMPANY, LTD. v. V/O SOVFRACHT.

Before Viscount SIMON (Lord
Chancellor), Lord RUSSELL OF
KILLOWEN, Lord MACMILLAN,
Lord PORTER and Lord SIMONDS.

Charter-party — Mixed time and voyage charter—Alterations to printed form of time charter—Effect—"One round voyage to"—Customary meaning—Repugnancy—Charter of ship to be delivered at a Bristol Channel bunkering port "for a period of one round voyage to the Kara Sea. . . . To be employed in lawful trades . . . between good and safe ports or places within the following limits: United Kingdom, Continent, South Africa, Baltic, White Sea, Murmansk; Mediterranean not east of Greece (excluding Spain and Spanish possessions) and Igarka, Yenissei River, Kara Sea, with liberty to call at ports or places en route and including Spitzbergen (Barentsburg and Grumant City) and Dikson. . . . To be redelivered . . . at an ice-free port in charterers' option in South Africa Cape Town/Lourenco Marques range"—Ship sent in ballast to Igarka—Timber cargo loaded, ship sailing for Durban on Sept. 1, 1939 — Ordered by U.S.S.R. authorities while still in Russian waters to put into Murmansk and discharge her cargo—Arrival at Murmansk on Sept. 9 —Discharge completed by Sept. 29—Ship unable to obtain immediate clearance from Russian authorities — Evidence of negotiations between British and Russian government authorities as to release of ships in Russian waters—Loading of pitprops commenced on Nov. 8 and completed on Nov. 17, ship then sailing for Garston—Arrival at Garston on Dec. 14, ship being requisitioned by British Government after discharge—Claim by shipowners against charterers—Alleged breach in failing to order ship to proceed to South Africa

immediately after discharging at Murmansk and in sending the ship to Garston with a cargo of pitprops—Arbitration—Award that charterers were liable in damages — Measure of damages — Case stated.

—Held, by H.L., that the effect of the insertion of the words "one round voyage to the Kara Sea" was to make that voyage the paramount feature of the whole contract (the payment of hire being determined by the length of time occupied by that voyage); that the technical meaning found by the umpire for the words "one round voyage to" was not inconsistent with the remainder of the charter-party and controlled the trading limits provisions of the charter-party; that the trading clause was a limiting and not an enabling clause (it prescribed limits outside which the ship might not go; it did not give liberty to neglect the prescribed adventure provided trading was confined within the limits mentioned); that the charterers were in breach in sending the ship with cargo to Garston instead of direct to South Africa; that there was no waiver by the shipowners of such breach; and that the award of damages (£8000) made by the umpire, and based on a period of non-requisition, would be upheld—Decision of C.A., reversing ATKINSON, J., affirmed.

—"One round voyage to" —
Meaning.

Per Viscount SIMON, L.C.: In order to avoid the possibility of future misuse of the material contained in the special case, it is well to add that the evidence offered before the learned arbitrator (which was uncontradicted) and the conclusion reached by him as to the meaning of the phrase, "One round voyage to" a specified place in a time charter-party, ought not to be treated as an established definition in other cases; it is merely the interpretation which the arbitrator, on the material before him, felt it necessary to adopt in the present instance. If unassisted by evidence or findings on the subject, I confess that I should have thought that a somewhat different meaning might well have been attributed to the phrase.

H.L.]

Temple Steamship Company, Ltd. v. V/O Sovfracht.

[H.L.]

This was an appeal by V/O Sovfracht, charterers of the steamship *Temple Moat*, from a decision of the Court of Appeal (77 Ll.L.Rep. 257) allowing an appeal by the Temple Steamship Company, Ltd., owners of the vessel, from a judgment of Mr. Justice Atkinson (76 Ll.L.Rep. 182) in favour of the charterers, on an award in the form of a special case stated by Mr. C. T. Le Quesne, K.C., the umpire in an arbitration between the steamship company, the owners of the steamship *Temple Moat*, and the charterers of the vessel, V/O Sovfracht, of Moscow.

The shipowners had claimed damages for breaches of a charter-party dated July 6, 1939, for a period of one round voyage to the Kara Sea. The vessel was to be redelivered at a South African port, but in fact she ultimately carried a cargo of timber to Garston, in the United Kingdom, and was then requisitioned. The shipowners contended that there was a breach of the charter-party, and that if the vessel had been redelivered in South Africa her chance of a free life would have been enlarged and they would have made higher profit. The umpire made an award in favour of the shipowners, but Mr. Justice Atkinson set aside his award and upheld his alternative award in favour of the charterers.

The Court of Appeal, however, reversed his decision and upheld the umpire's award in the shipowners' favour.

The *Temple Moat* was chartered under a charter-party which provided (*inter alia*) as follows:—

1. Owners agree to let, and charterers agree to hire steamer for a period of one round voyage to the Kara Sea from the time . . . the steamer is delivered . . . at a Bristol Channel bunkering port . . . Steamer to be employed in lawful trades for the conveyance of lawful . . . merchandise . . . between good and safe ports or places within the following limits: United Kingdom, Continent, South Africa, Baltic, White Sea, Murmansk, Mediterranean not east of Greece (excluding Spain and Spanish possessions) and Igarka, Yenissei River, Kara Sea, with liberty to call at ports or places en route and including Spitzbergen (Barentsburg and Grumant City) and Dikson, where she can lie safely always afloat or safe aground where steamers of similar size and draft are accustomed to lie aground in safety.

5. Charterers to pay owners hire of 3s. 9d. per ton deadweight per calendar month in British currency from time of vessel's delivery until her re-delivery. . . . The charterers to pay owners a lump sum of £120 as compensation for the Kara Sea trading.

6. Steamer to be re-delivered on expiration of this charter in same good order as when delivered to charterers . . . at an ice-free port in charterers' option in South

Africa Cape Town/Lourenco Marques range . . . Charterers to give owners not less than five days' notice at which port and on about which day steamer will be re-delivered.

19. Charterers to have the option of subletting steamer giving due notice to owners, but original charterers always to remain responsible to owners for due performance of this charter.

34. Owners to pay usual insurance premium only and charterers are to pay additional premium due to the vessel proceeding to a place outside the limits of the trading warranties. This is to be accomplished by charterers effecting insurance with approved underwriters for the voyage covered by this charter-party and owners suspending their existing insurance accordingly.

According to facts found by the umpire, the vessel was delivered at an English port on July 27, 1939, and sailed in ballast to Igarka, reaching there on Aug. 16. She there loaded a cargo of timber for Durban, and on Sept. 1 she left Igarka for Durban. Under an order given by a Russian Government Department on Sept. 3, the *Temple Moat* put into Murmansk on Sept. 9, where her cargo was discharged. Under Soviet law the Russian Government Department was empowered to give such orders, and it would have been illegal for the charterers not to comply with them. On Sept. 27 the master received a telegram from the British Ambassador in Moscow, at the request of the British Admiralty, instructing him to proceed to the United Kingdom.

The discharge at Murmansk was completed on or about Sept. 29.

After the cargo had been discharged in Murmansk, the vessel lay at anchor there until she began to load a cargo of pitprops on Nov. 8. During this time no orders were given by the charterers to the vessel. The umpire said that on the evidence before him he found it impossible to say why this long delay occurred. The shipowners contended that it constituted a breach of the charter-party. The parties negotiated during the discharge about re-delivery of the vessel at Murmansk after discharge, but these negotiations broke down before discharge was completed.

Representatives of the owners of the British vessels, including the *Temple Moat*, which were under charter to the charterers (or perhaps in some instances to some other Russian organisation) and which were then lying in Northern Russian waters, had met on Oct. 9 and considered the delay to their vessels in those waters. The charter-parties of most (if not all) of the vessels other than the *Temple Moat* provided for a return voyage from Russia to the United Kingdom, but it was made clear by the owners' representatives that the *Temple Moat* was chartered to proceed from the Kara Sea to