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Page 46. Minister of Pensions v. Chennell, [1947] 1 K.B. 150, *should read* [1947] K.B. 250.

Page 200. *Add*: Sanderson v. Blyth Theatre Company, [1903] 2 K.B. 533.

Page 314. *Add*: *Ilanover*, 80 L.L.Rep. 433.

Page 402. *For* Eccles v. Williams, *read* Eads v. Williams.

Page 448. *Add*: *Highland Loch*, [1912] A.C. 312.



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[BY SUBSCRIPTION

## HOUSE OF LORDS.

June 30, July 1, 3, 4, 7, 8, 9, 1947.

OCEAN STEAMSHIP COMPANY, LTD. v.  
LIVERPOOL & LONDON WAR RISKS  
INSURANCE ASSOCIATION, LTD.

Before Lord THANKERTON, Lord WRIGHT,  
Lord PORTER, Lord UTHWATT and Lord  
NORMAND.

*Insurance—Marine or war insurance—Warlike operations—Damage to plaintiffs' ship by sea perils—Proximate cause—Plaintiffs insured by defendant association against "consequences of hostilities or warlike operations"—Ship loaded with war stores for carriage from Liverpool to Alexandria—Circuitous route via Cape of Good Hope—Urgency of operations necessitating carriage of heavy deck cargo (which was unusual on such voyage)—Very heavy weather experienced on voyage, resulting in deck cargo breaking adrift, tearing tarpaulins and smashing hatch covers—Entry of sea water into hold, causing ship to be down by head—Speed maintained in spite of change of trim—Damage to ship (1) in way of No. 2 hold, directly attributable to deck cargo coming adrift; (2) in way of forepeak; (3) in way of after well deck and poop—Whether total damage recoverable under policy as a consequence of warlike operations—Onus of proof—Meaning of "consequences."*

———*Held, by H.L., that although it was not every loss occurring in the course of a warlike operation which resulted from such operation, and although damage by wind and weather was prima facie a marine casualty, the mere fact that the ultimate cause of damage was a peril of the sea was not conclusive that the loss was due to marine peril; and that where as here, the ship was carrying war stores on deck, exposing her to the danger which she actually encountered (i.e., the breaking adrift of such stores, with the conse-*

*quent smashing of hatch covers), the damage resulting therefrom was recoverable as due to a war risk; and that therefore the plaintiffs were entitled to recover under head (1), but not under heads (2) and (3), which were not shown to be due to anything more than bad weather aggravated by war conditions—Order of C.A. varied—Special order as to costs.*

———*Question whether same result would follow if deck cargo was not war stores, not decided.*

———*Meaning of "consequences" of warlike operations" discussed.*

*Per Lord PORTER (at p. 13): As Lord Wright pointed out in the Coxwold, [1942] A.C. 691; 73 Ll.L.Rep. 1, the basis of the decisions seems to be that the casualty can be traced to definite action on the part of those on board the quasi-warship in directing the course of the vessel to carry out the warlike operation. That direction may take her into collision with another vessel or on to a rock, but incidents may occur in the course of the voyage without being caused by such definite action on the part of those directing it. In the case of stranding or collision the progress of the ship brings her on to the rock or into the other vessel. The rock does not move; it is static. If the other vessel runs into her and it is that vessel's action which causes the injury, it is the progress of that ship and not that of the damaged vessel which causes the injury, and whether that injury is a war or marine loss depends upon whether the other ship, not the damaged vessel, is engaged upon a warlike operation or upon an ordinary mercantile adventure.*

*Where the ship is struck and injured by the sea, in substance it is not the movement of the vessel but the motion of the sea which causes the damage. The doctrine has never been extended to cover mere sea damage without more. Possibly it may cover a case where the ship is*



*pressed into the sea for war purposes, but that is a deliberate extension of the risk in order to assist in the war effort. No such act was done in the present case, and damage caused by the force of wind or sea is not in my view war damage even though it would not have occurred if the vessel had not zigzagged or kept her speed, provided of course that her action in doing so did not differ from that which a ship carrying an ordinary mercantile cargo would undertake in the conditions of war.*

This was an appeal by the Liverpool & London War Risks Insurance Association, Ltd., from an order of the Court of Appeal 79 Ll.L.Rep. 467 affirming a decision of Mr. Justice Atkinson (79 Ll.L.Rep. 58) in favour of the plaintiffs, the Ocean Steamship Company, Ltd., Water Street, Liverpool, on their claim, as owners of the motor vessel *Priam*, to be indemnified under a policy of marine insurance issued by the appellants and providing as follows:

1. This insurance is only to cover the risks (in this policy referred to as "King's Enemy Risks") of capture, seizure, arrest, restraint, or detainment by the King's Enemies and the consequences thereof, or of any attempt thereto; also of the consequences of hostilities or warlike operations by or against the King's Enemies whether there be a declaration of war or not . . .

7B. If the ship is requisitioned by or on behalf of His Majesty (unless she is running under a charter-party under which all risk of loss is borne by the Crown) this policy shall so long as the requisition remains effective have effect subject to the following modifications, that is to say—

(1) notwithstanding anything contained in Clause 1 hereof this policy shall extend to cover not only King's Enemy Risks but also war risks as hereinafter defined;

(3) "War risks" means:—

(A) the risks of war which would be excluded from an ordinary English policy of marine insurance by the following, or similar, but not more extensive clause:—

Warranted free of capture, seizure, arrest, restraint or detainment and the consequences thereof or of any attempt thereto; also from the consequences of hostilities or warlike operations, whether there be a declaration of war or not, civil war, revolution, rebellion, insurrection or civil strife arising therefrom or piracy.

(B) loss of or damage to the ship caused by:—

(i) hostilities, warlike operations, civil war, revolution, rebellion,

insurrection or civil strife arising therefrom;

(ii) mines, torpedoes, bombs or other engines of war.

According to the facts found by Mr. Justice Atkinson, the *Priam* was insured by the defendants from June 30, 1942, to Dec. 29, 1942. On Dec. 2, 1942, the ship sailed from Liverpool for Alexandria with a cargo of which 78.5 per cent. consisted of war stores. It was conceded that the voyage was a warlike operation. Between Dec. 7 and 13 she encountered very heavy weather and sustained damage and thereby expense to the extent of £1632 10s. 10d. The plaintiffs claimed that the damage which resulted from heavy weather while a ship was engaged on a warlike operation was a consequence of that operation, or, at any rate, that under the special circumstances of this case it was such a consequence.

The *Priam* was a motor vessel of 10,029 gross tonnage, 486 ft. long with 66 ft. beam. She was practically a new ship in 1942, capable of 17 knots. Her draught forward was 28 ft. 4 in. and 30 ft. 9 in. aft. She was under requisition to the Minister of War Transport and was ordered to proceed, in December, 1942, from Liverpool to Alexandria. She was to sail independently and her route was dictated, north of Ireland and then slightly north of west until she reached lat. 58 deg. N. and long. 35 deg. W., and then to proceed south, passing to the west of the Azores direct to the Cape. She was to zigzag continuously. But for the war, the route would have been east of Ireland and by the Mediterranean.

The cargo was of great military importance, the Battle of Alamein having just been fought, and consisted of aeroplanes, tanks, guns and so on, things which were urgently needed, and time was of the utmost importance. So much cargo had to be taken that the master was asked to carry cargo on deck. But for the fact that the cargo was of vital military importance, he would have refused, and his Lordship said that he accepted the master's evidence that on principle he disapproved of all deck cargo on a voyage across the Atlantic at that time of the year. The master said that he had never before been asked to carry deck cargo under such conditions, and his Lordship said that he was satisfied that but for the requirements of the operation the master would not have carried deck cargo. The cargo carried on the forward well deck included two cases containing aeroplane bodies, weighing, the one, 3 tons 10 cwt., and the other, 2 tons 15 cwt., and a bridge-layer tank weighing over 21 tons. The two cases were firmly lashed in position on the hatch covers of No. 2 hold and the tank was firmly lashed in position on the starboard side of the vessel immediately opposite to the said hatch covers. A new gun platform had been mounted on the fore-castle head.



## H.L.] Ocean Steamship Co., Ltd. v. Liverpool &amp; London War Risks Ins. Assn., Ltd. [H.L.]

She sailed on Dec. 2, put into the Clyde to renew a cast iron T piece on the starboard main engine, left the Clyde on Dec. 5, and for two days all went well. Then followed a period of exceptionally heavy weather. There was a succession of gales from the 7th until the 13th. On the night of the 7th the wind reached gale force; at 11 a.m. on the 8th the cases of aeroplanes began to see-saw across the tarpaulins owing to their being struck by a sea, which caused the cases partly to collapse and so slackened the lashings. By 6 p.m. the tarpaulins were badly damaged. There was a head wind from the south-west and the ship was shipping water. On Tuesday night, the 8th, the tarpaulins were badly torn and at dawn on the Wednesday it was seen that a few of the short hatch covers were missing. The master's report said:

The 21 tons bridge-layer was adrift on the starboard side of the deck, the wings of which had evidently come into contact with the tarpaulins and cut them. Not a single wire lashing was broken on this 21 tons "lift." Actually the lifting shackles attached to the "lift" through which the wire lashings passed had all opened out at the jaws and it had slipped all its lashings intact. The ship was now kept away before the wind to enable the men to work on the foredeck. The wreckage of the two cases of planes were hove from the hatch and secured against the port bulwarks.

The bridge-layer was re-lashed and the damage to the hatch covers was made good. But there was 11 ft. of water in No. 2 hold, and the evidence was, and this was accepted, that the weight of this water would be round about 800 tons. The effect of this was to increase the mean draught by  $1\frac{1}{4}$  in. and the draught forward by 3 ft. 6 in. On the Wednesday afternoon, although there was 10 ft. of water in that hold, the engines were turning at the rate of 100 revolutions per minute, which meant that she was going at almost full speed.

On Wednesday night there was, again, a strong west wind and the speed had to be reduced, but on Thursday at 7 a.m., although there was 9 ft. of water in the hold, the ship was going at full speed. On the Thursday morning it was observed that the windlass motor room had been flooded. The electrical equipment there was saturated with sea water and a considerable amount of damage had been done. The damage would not have happened unless the vessel had been down by the head and been driven unduly fast against the seas. Then on Friday there was more trouble, but Saturday, the 12th, was the more important day. There was a very high cross sea and at 2.30 in the morning this bridge-layer again came adrift, crashed across No. 2 hold—the aeroplanes too, were at large, being washed about—and it was seen that the hatch was stripped completely of  $2\frac{1}{4}$  sections

of hatch covers. There was 32 ft. 6 in. of water in the hold, and the evidence was that the weight of that water would be 2243 tons, or thereabouts. The ship was down by the head by 10 ft. 5 in. At 11 o'clock that night she safely reached Ponta Delgada\* and the danger period was over.

Except for the damage to the gun platform, the damage suffered would not have been suffered but for the tearing of the tarpaulins and the stripping of the hatch covers. It was due to the stripping of the hatch covers that at first the 11 ft. of water and later the 32 ft. 6 in. of water got into the hold. The weight of the water in the hold evidently caused the ship to be deeper in the water and to be very, very materially down by the head. The ship, thereby, lost buoyancy and finally the well decks were awash and in that way the ship became a very easy prey to the violence of the waves. But for the urgency of the operation, the master would have, if necessary, hove to or run before the wind. At times he did, but the urgency for speed induced him to forge ahead in the teeth of the gales when he would not have done so had he but to consider the safety and well-being of the ship and not the urgency of the operation.

On the above findings, Mr. Justice Atkinson held that although the immediate cause of the damage in point of time was a marine peril, namely, heavy weather, the effective cause was the additional risks and perils of the warlike operation, which entailed the carriage of a heavy deck cargo of a warlike character and the maintenance of speed in hazardous circumstances; and he entered judgment for the plaintiffs for the whole of the damage except that done to the gun platform.

On appeal by the defendants the Court of Appeal (Scott, Tucker and Bucknill, L.J.J.) held that the damage was due to a combination of causes which arose as a consequence of the warlike operation on which the ship was engaged, notwithstanding that the existence of heavy weather was a necessary element in bringing about the harmful results of the combination; and that therefore the plaintiffs were entitled to recover in respect of the whole of the damage sustained.

The defendants appealed.

Sir Valentine Holmes, K.C., Mr. Patrick Devlin, K.C., and Mr. H. L. Parker (instructed by Messrs. Hill, Dickinson & Co.) appeared for the appellants; Mr. H. U. Willink, K.C., and Mr. A. J. Hodgson (instructed by Messrs. Bentleys, Stokes & Lowless, agents for Messrs. Alsop, Stevens & Collins Robinson, of Liverpool) represented the respondents.

Judgment was reserved.

\* Temporary repairs were carried out at Ponta Delgada, Freetown and Cape Town.