CELEBRATING 125 YEARS OF EXCELLENCE

UK Defence Club 1888-2013

UKDC
IS MANAGED
BY **THOMAS**
MILLER

A WORD OF WELCOME FROM OUR CHAIRMAN

Michael Pateras
Chairman since September, 2011

Welcome to this special publication, celebrating 125 years of the UK Defence Club. Or should that be 144 years? Many readers may be surprised to learn that the Association can trace its origins back to 1869. That was the year when one of our forerunners, the Newcastle-upon-Tyne Iron Steamship Freight, Dead Freight and Demurrage Association, was established.

We date our anniversary, however, to the year the Association was first incorporated in England - 1888.

But whatever the date and whatever the name, I am proud to be able to say that the Association has remained true to its key values throughout. We are as committed as ever to assisting Members in resolving their FD&D disputes in the most appropriate and cost-effective way.

With our unique, stand-alone status – unlike many of our competitors, the Association is not part of a P&I offering – we continue to focus entirely on providing insurance for legal and other costs, and assisting our Members.

Over the years, the Association has been involved in a great many cases, some of which have been heard before the House of Lords and more recently the Supreme Court. The majority however are subject to arbitration – in particular, arbitration in London – which continues to be the forum of choice for dispute resolution. Given the international reach of the shipping industry, however, other jurisdictions now strive to promote local arbitration as an alternative.

With the number of arbitrations having increased significantly since the financial crisis in 2008, the Association is conscious that the arbitration process has remained largely unchanged over many years. We believe the time has come to debate its cost-effectiveness and appropriateness for complex disputes, in particular where there are significant amounts at stake.

In this 125th anniversary year for the Association, we will strive to lead the debate as to what forums best serve the industry, and whether any changes could be implemented to improve the arbitration process rather than risk it becoming a quasi-judicial process.

Having helped shaped shipping law in many jurisdictions over the years with involvement in key cases, some of which are referred to in this publication, the Association will always stand up for the interests of our Members.

Finally, I am delighted to be able to take this opportunity to pay tribute to everyone who is serving and has served on the Association's Board of Directors. As senior principals with many years experience in the maritime industry, their dedication, expertise and generosity with their time have ensured that the Association's affairs are so well overseen.

It is my good fortune to be Chairman of the Association on this auspicious occasion. It is an opportunity both to assess our contribution to the industry and to shipping law over the last 125 years, and to look forward to the years ahead. Having learned the lessons of the past, the Association anticipates celebrating many more anniversaries protecting the best interests of our Members.

M.G. Pateras
Chairman
The United Kingdom Freight, Demurrage & Defence Association Ltd.
September, 2013

1886

SHAPING OUR WORLD

Complex and constantly evolving, shipping operates within a structure of obligations between different parties – be they an owner, charterer, shipper, bill of lading holder or state authority. When disputes arise, the relationships between the relevant parties can fall under judicial scrutiny.

This scrutiny often involves much more than simply settling the rights of the litigants. Courts are continually analysing the interplay of rights between parties. They give definition to obscure or uncertain practices, as well as broaching and describing wider principles of law. Over time, their judgments gradually build the framework of precedent that regulates and evolves the industry.

Of course, a judgment may be almost entirely unremarkable and have only limited significance. It may simply evaluate the position between parties. Alternatively, a decision might finesse a point of law or give certainty to common contractual clauses. The importance of such judgments reaches beyond the dispute itself, reverberating throughout the industry.

And every now and again, a judgment will extend even beyond the world of shipping – creating a new legal paradigm.

The Association has been involved in a large number of influential judgments over the past 125 years. From decisions relevant to only a small segment of the industry, to those that developed new legal principles, we have helped shape the legal landscape of shipping. Whether notorious or simply useful, these judgments resonate across all aspects of shipping.

The following cases are examples of some of the disputes we have been involved in which have raised important industry issues. They have each contributed to the body of law that regulates commercial shipping. Whilst some of these judgments may have been eclipsed by later decisions, others still remain as standing authority.

Although we have 125 years of cases to draw upon, we have chosen to focus on those cases that have influenced today's modern era of shipping practice.

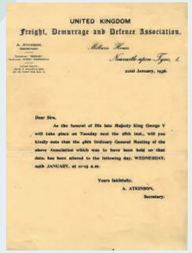
During the 1930's and 1940's the Second World War significantly impacted on merchant shipping and trading activities. The Association was concerned with disputes arising out of the requisition and total loss of ships and non-performance of charterparties.

Arbitration as a forum for dispute resolution was in its early stages and the majority of contentious cases were heard by the Court.

The post-war reconstruction and American Ships Sales Act 1946 presented entirely different challenges, evidenced by a circular to Members on the application of standard calculations for the sale of Liberty Ships.

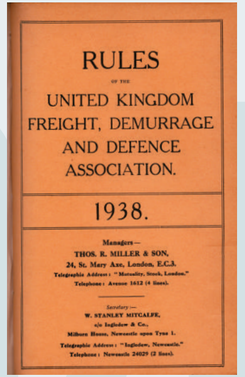
HIGHLIGHTS

1935
The Board Meeting Minute Book

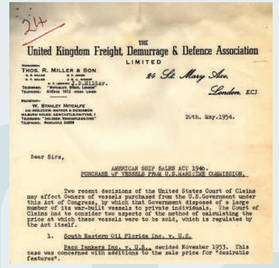


1936
The 48th Ordinary General Meeting was postponed due to the funeral of King George V

1937
Notice of 49th Ordinary General Meeting



1938
Rules of the Association



1946
The American Merchant Ship Sales Act came into force in 1946 and the Association later issued a Circular to the Membership

1936

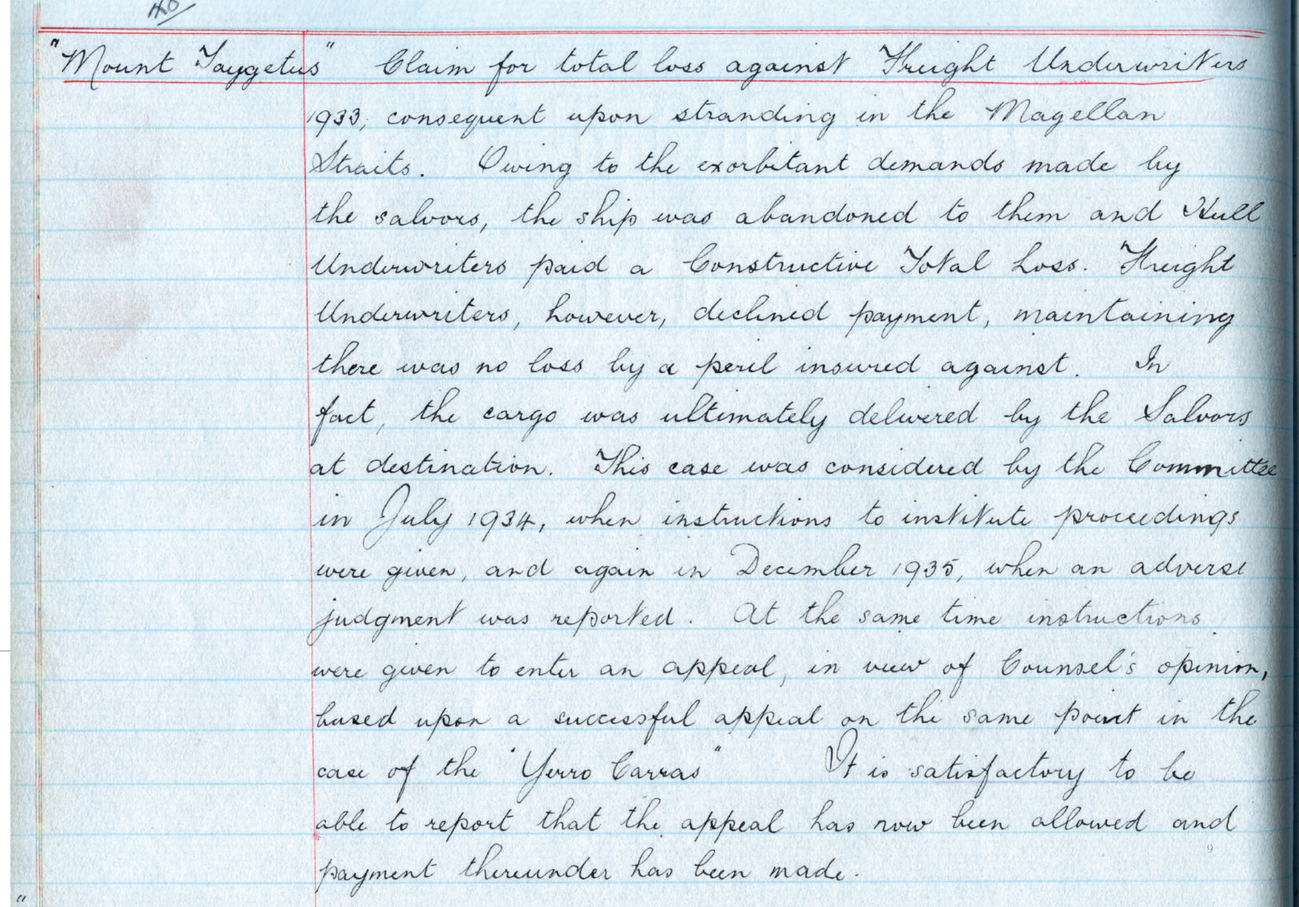
The Mount Taygetus

The ship sustained serious damage following a stranding incident and was salved. In view of exorbitant demands from the salvors the ship was abandoned to them. Although hull and cargo underwriters paid total losses, freight underwriters declined to pay, maintaining there was no loss by a peril insured against.

The owner succeeded on appeal and the claim was paid by the underwriters.

1936
The Mount Taygetus

Extract from the Minutes of the Board Meeting held on 17th September, 1936.



"Mount Taygetus" Claim for total loss against Freight Underwriters 1933, consequent upon stranding in the Magellan Straits. Owing to the exorbitant demands made by the salvors, the ship was abandoned to them and Hull Underwriters paid a Constructive Total Loss. Freight Underwriters, however, declined payment, maintaining there was no loss by a peril insured against. In fact, the cargo was ultimately delivered by the Salvors at destination. This case was considered by the Committee in July 1934, when instructions to institute proceedings were given, and again in December 1935, when an adverse judgment was reported. At the same time instructions were given to enter an appeal, in view of Counsel's opinion, based upon a successful appeal on the same point in the case of the "Yorro Carras" It is satisfactory to be able to report that the appeal has now been allowed and payment thereunder has been made.

1940s

Liberty Ships

Using modified British designs, Liberty Ships were constructed by the U.S. Maritime Commission to sustain the war economy and staunch the loss of ships sunk in combat. In total, 2,751 ships were built.

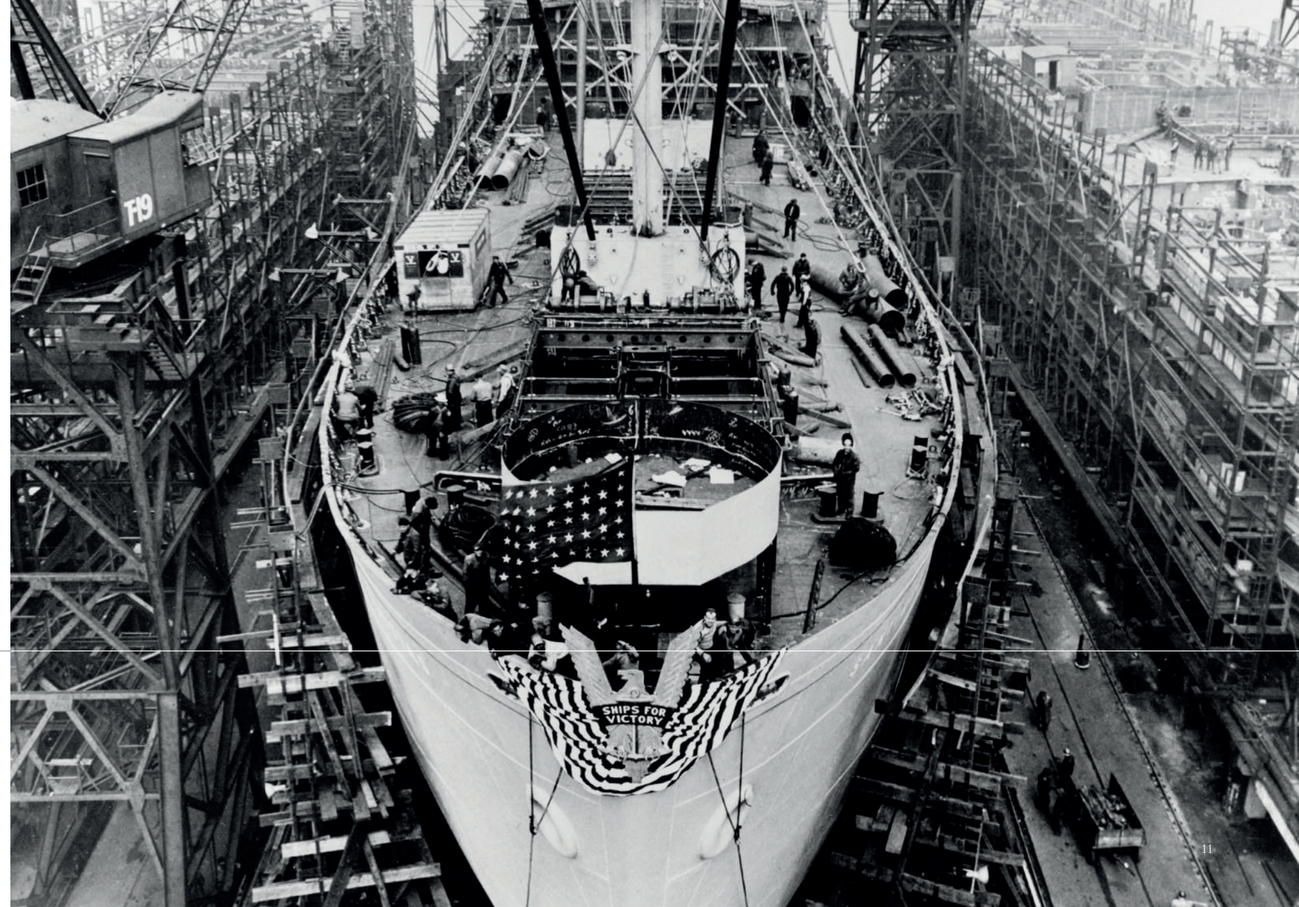
Remarkably, oceangoing ships could be constructed in just two weeks – helping to limit the casualties that were largely inflicted by U-boats, and so maintaining vital supply lines.

Liberty Ships also became of great importance to the maritime industry of Greece.

Over 2,400 Liberty Ships survived the war, with two currently remaining operational as museum ships.

1943
Liberty Ships

Liberty ship built at Bethlehem Fairfield shipyard, Maryland, USA. Photographed in April, 1943.



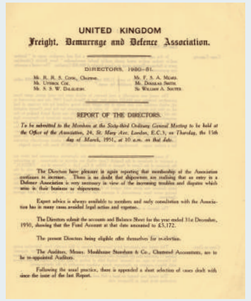
1950

Global events such as the Suez Crisis and Sinai War continued to impact on shipping, giving rise to disputes over the frustration of charterparties, costs for rerouting and the consequential delays. These helped define the rights of parties to terminate agreements.

During the decade the Association considered over 65 cases connected to the Suez Crisis and dealt with many more general enquiries.

The English Commercial Court expressed concerns over costs and delays resulting from an emerging "switch to arbitration" for dispute resolution. Important decisions were handed down on the safety of ports and the mechanism by which the Hague Rules were incorporated into a charterparty.

HIGHLIGHTS

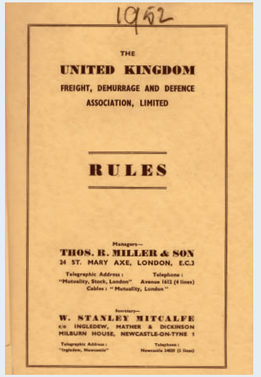


UNITED KINGDOM
Freight, Demurrage and Defence Association.

DIRECTORS, 1950–51.

REPORT OF THE DIRECTORS.

1951
Annual Report of the Directors



1952

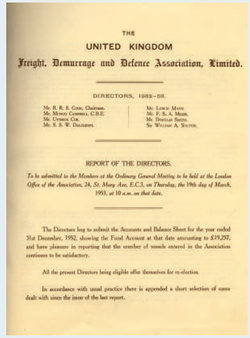
THE
UNITED KINGDOM
FREIGHT, DEMURRAGE AND DEFENCE
ASSOCIATION, LIMITED

RULES

Managers—
THOS. R. MILLER & SON
24 ST. MARY AXE, LONDON, E.C.3

Solicitors—
W. STANLEY MITCALFE
c/o INGLEDEW, MATHER & DICKINSON
MILBURN HOUSE, NEWCASTLE-ON-TYNE 1

1952
Rules of the Association



THE
UNITED KINGDOM
Freight, Demurrage and Defence Association, Limited.

DIRECTORS, 1952–53.

REPORT OF THE DIRECTORS.

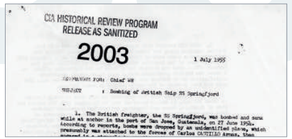
1953
Annual Report of the Directors

1954

The Springfjord

Destined for Britain, the SPRINGFJORD was loading coffee and cotton at Puerto San Jose in Guatemala when she was mistakenly thought to be discharging arms. During a sudden coup d'état the ship was napalmed by an unmarked Lockheed heavy fighter aircraft, ostensibly belonging to the hitherto unknown Guatemalan "Liberation Air Force". It emerged that the aircraft was manned by US pilots.

The incident was debated in Parliament and leaked CIA memoranda revealed that the US Embassy had authorised the Guatemalan president to offer US $900,000 in settlement of losses arising from the incident.


CIA HISTORICAL REVIEW PROGRAM
RELEASE AS SANITIZED
2003

1 July 1955

SUBJECT: Bombing of British ship SS Springfjord

1. The British freighter, the SS Springfjord, was bombed and machine gunned by a plane in the port of San Jose, Guatemala, on 27 June 1954. Accompanying reports, bombs were dropped by an unidentified plane, which presumably was attached to the forces of Carlos CASTILLO Armas, then

1954
The Springfjord

A casualty of US Cold War policy played out in Guatemala.

The American fighter Lockheed P-80 Shooting Star.

1954

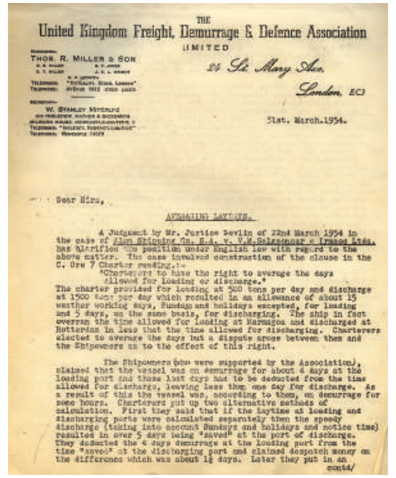
The Houston City

Two fundamental principles were defined when the Privy Council considered whether inadequate facilities might render a port unsafe. The court accepted that the lack of fenders and hauling-off buoys exposed the ship to sudden northerly gales at a Western Australian port. This materially impacted upon the safety of the port, making the charterer liable for the resulting damage to the ship.

However, the court noted that when fixing a charter to a defined port without an express warranty of safety, the responsibility of establishing whether the ship can safely berth there falls upon the owner.

1954
The Houston City

The ship berthed at Geraldton, Australia and sustained damage during heavy weather because of inadequate fendering and the absence of hauling-off buoys.



THE
United Kingdom Freight, Demurrage & Defence Association
LIMITED

THOS. R. MILLER & SON

W. STANLEY MITCHELL

24 St. Mary Axe.
London, EC3

31st. March.1954.

Dear Sirs,

AVERAGING LAYTIME.

A Judgment by Mr. Justice Devlin of 22nd March 1954 in the case of Alma Shipping Co. S.A. v. V.M.Salgaoncar e Irmaos Ltda. has clarified the position under English law with regard to the above matter. The case involved construction of the clause in the C. Ore 7 Charter reading:-

"Charterers to have the right to average the days allowed for loading or discharge."

The charter provided for loading at 500 tons per day and discharge at 1500 tons per day which resulted in an allowance of about 15 weather working days, Sundays and holidays excepted, for loading and 5 days, on the same basis, for discharging. The ship in fact overran the time allowed for loading at Marmagoa and discharged at Rotterdam in less that the time allowed for discharging. Charterers elected to average the days but a dispute arose between them and the Shipowners as to the effect of this right.

The Shipowners (who were supported by the Association), claimed that the vessel was on demurrage for about 4 days at the loading port and these lost days had to be deducted from the time allowed for discharge, leaving less than one day for discharge. As a result of this the vessel was, according to them, on demurrage for some hours. Charterers put up two alternative methods of calculation. First they said that if the laytime at loading and discharging ports were calculated separately then the speedy discharge (taking into account Sundays and holidays and notice time) resulted in over 5 days being "saved" at the port of discharge. They deducted the 4 days demurrage at the loading port from the time "saved" at the discharging port and claimed despatch money on the difference which was about 1½ days. Later they put in an

contd/

1954
Alma Shipping

Circular issued to the Membership informing of the decision in the Alma Shipping case.

Alma Shipping v V.M. Salgaoncar e Irmaos Ltda

It had been thought that, in the context of the calculation of laytime or demurrage, a charterparty option to average laytime permitted a charterer to add all the periods for loading and discharging against which all time used would be applied.

However, the standard charter wording usually permitted three logical analyses – each resulting in different outcomes and financial consequences. In a decision that provided the standard interpretation of the concept, the court held that timesheets should be maintained for loading and discharging. Thereafter, demurrage at one end can be set off against despatch at the other.

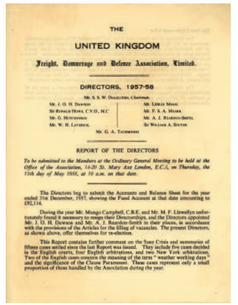
The Stork

To avoid the difficulties caused by insisting on an alternative nomination, a master who fears a port or berth is unsafe may rely on assurances given by a charterer that, while the port is safe, damages may subsequently result. The question arises as to whether the master's action – in knowledge of the risk of unsafety – breaks the chain of causation which started with the charterer's wrongful nomination of an unsafe port/berth.

The Court of Appeal recognised this "horns of a dilemma" facing a master, and held the test to be one of reasonableness of the crew. Thus, the absence of proper precautions by the crew in the face of perceived danger might be such that it breaks the chain of causation. Otherwise, the charterer remains liable for its instructions to proceed to a non-contractual port/berth.

1955
The Stork

The absence of proper precautions by the crew of a ship in the face of perceived danger might be such that it breaks the chain of causation.



THE
UNITED KINGDOM
Freight, Demurrage and Defence Association, Limited.

DIRECTORS, 1957-58

REPORT OF THE DIRECTORS

To be submitted to the Members at the Ordinary General Meeting to be held at the Office of the Association, 14-20 St. Mary Axe London, E.C.3, on Thursday, the 11th day of May 1957, at 11 a.m. on that date.

The Directors beg to submit the Accounts and Balance Sheet for the year ended 31st December, 1957, showing the Fund Account at that date amounting to £92,114.

During the year Mr. Mungo Campbell, C.B.E. and Mr. M. F. Llewellyn unfortunately found it necessary to resign their Directorships, and the Directors appointed Mr. J. O. H. Dawson and Mr. A. J. Reardon-Smith in their places, in accordance with Article 84 of the Articles of Association of vacancies. The present Directors, as shown above, offer themselves for re-election.

This Report contains further comment on the Suez Crisis and memoranda of fifteen cases settled since the last Report was issued. They include five cases decided in the English courts, four English arbitrations, and two New York arbitrations. Two of the English cases concern the meaning of the term "weather working days" and the significance of the Clause Paramount. These cases represent only a small proportion of those handled by the Association during the year.

1957
The Saxon Star

Report of the Directors highlighting the significance of the Saxon Star judgment.

The Saxon Star

A US Clause Paramount can fairly be regarded as a standard charterparty term, given its frequent express incorporation into charters. A US Clause Paramount usually incorporates the Hague Rules in respect of bills of lading. Whether the Hague Rules, with its detailed apportionment of rights and defences, extended to charterparty obligations fell to be determined in this seminal decision.

The House of Lords adopted a purposeful approach to the issue. It considered an incorporation of a US Clause Paramount could fairly be regarded as an intention by the parties to embody the Hague Rules into a charter. It followed that any reference in the Paramount Clause to "this bills of lading" should be read as "this charterparty". Thus, references precluding the application to charterparties should be ignored.

The concept of damage was also expanded to include non-physical, economic losses. This robust judgment established, despite some dissension, the framework for the determination of an owner's and a charterer's rights that remains undisturbed.

1968

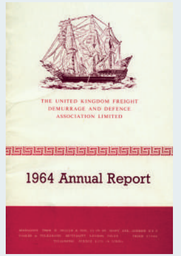
The ongoing conflicts over the Suez Canal and the Arab-Israeli War continued to develop the law of frustration and rights of termination.

The Association was involved in a number of shipbuilding disputes, claims against underwriters for loss of earnings and the unusual consequences resulting from the devaluation of sterling.

The London Maritime Arbitrators Association was established as an "independent" forum for dispute resolution. By the end of the decade, over 1,300 ships were entered with the Association.

HIGHLIGHTS

1962
Circular to the Membership reminding that new buildings should be entered as of the date of the contract



1964
Annual Report of the Association

1968
Annual Report of the Association

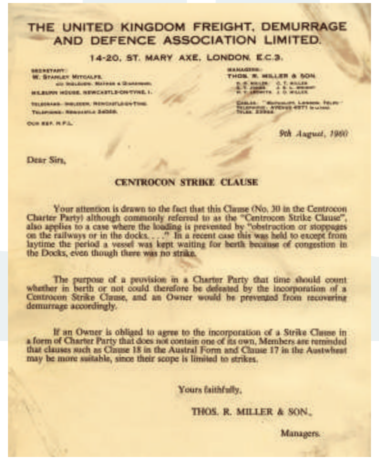
1969
Annual Report of the Association

The Laga

It is common for laytime to be interrupted by strike action. The novel issue in this case was whether a refusal by dockworkers to discharge coal cargoes in support of a strike by coal miners fell within a standard laytime strike provision.

The boycott was not usual: cargoes other than coal were unloaded and the dockworkers had no grievance with their employers.

The court found a sympathetic strike falls within the ambit of a strike clause. This purposeful and flexible analysis is now part of the standard interpretation of the nature of a strike.



THE UNITED KINGDOM FREIGHT, DEMURRAGE AND DEFENCE ASSOCIATION LIMITED.

14-20, ST. MARY AXE, LONDON, E.C.3.

MANAGERS: THOS. R. MILLER & SON

9th August, 1960

Dear Sirs,

CENTROCON STRIKE CLAUSE

Your attention is drawn to the fact that this Clause (No. 30 in the Centrocon Charter Party) although commonly referred to as the "Centrocon Strike Clause", also applies to a case where the loading is prevented by "obstruction or stoppages on the railways or in the docks. . . ." In a recent case this was held to except from laytime the period a vessel was kept waiting for berth because of congestion in the Docks, even though there was no strike.

The purpose of a provision in a Charter Party that time should count whether in berth or not could therefore be defeated by the incorporation of a Centrocon Strike Clause, and an Owner would be prevented from recovering demurrage accordingly.

If an Owner is obliged to agree to the incorporation of a Strike Clause in a form of Charter Party that does not contain one of its own, Members are reminded that clauses such as Clause 18 in the Austral Form and Clause 17 in the Austwheat may be more suitable, since their scope is limited to strikes.

Yours faithfully,

THOS. R. MILLER & SON,

Managers.

1960
The Laga

Circular to Members concerning the operation of the CENTROCON Strike Clause.

1962

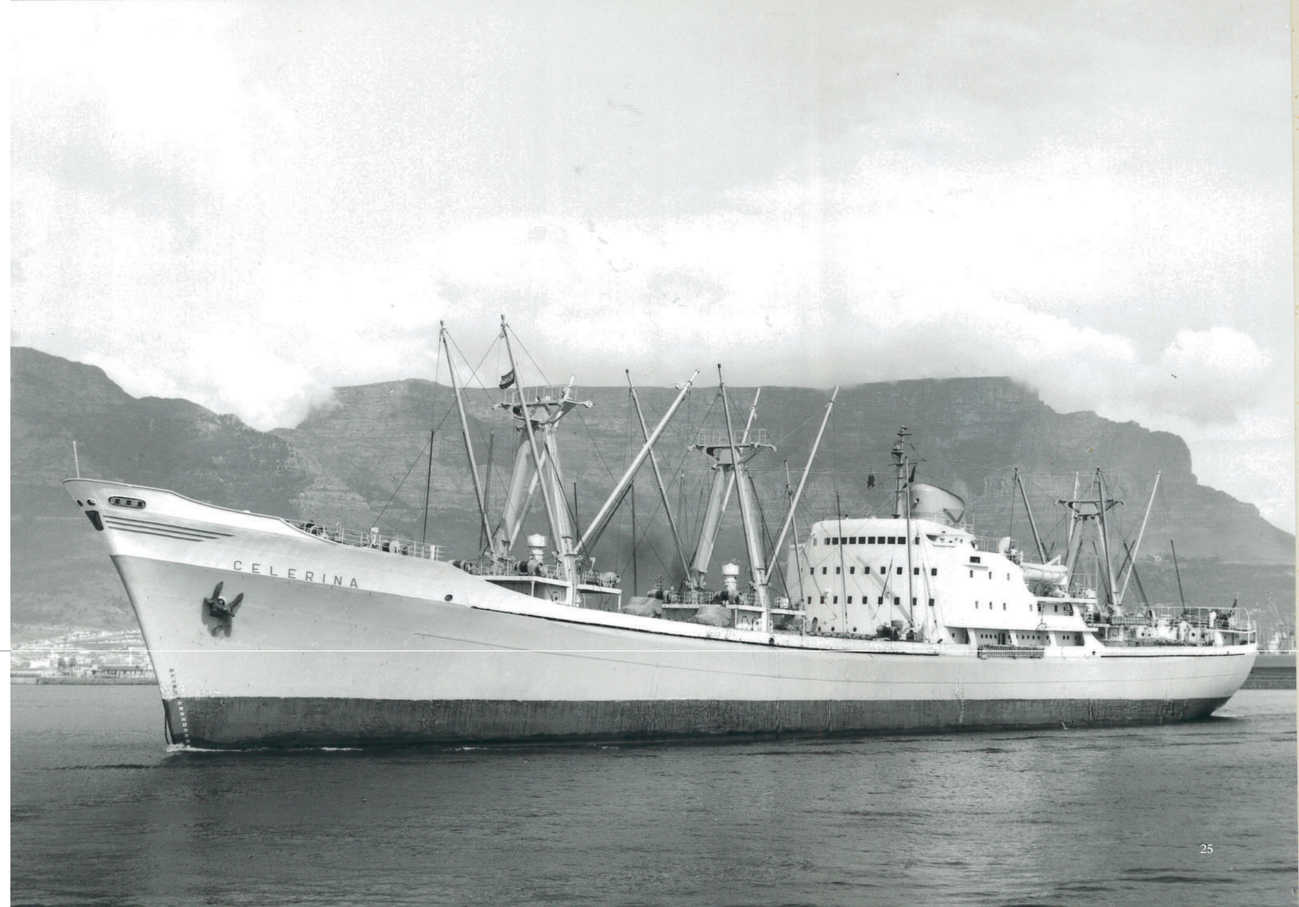
The Celerina

When a Super Constellation passenger aircraft carrying 76 passengers and crew, ditched in bad weather into 20-foot North Atlantic swells, the CELERINA answered a mayday call and rushed to the location. In difficult conditions, the crew struggled to secure the life rafts and managed to save 28 souls. Regretfully, a number of passengers had succumbed to hypothermia.

The owner submitted a claim for its expenses and whilst mariners bear a moral duty to save lives in peril there is no salvage award for life, nor is one recognised under US law. However, the US Navy – who had the aircraft under charter at the time – made an ex gratia payment of all expenses.

1962
The Celerina

The inestimable value of human life was demonstrated in this dramatic salvage.



The Eugenia

It is difficult to assess when a contract is frustrated, and it will not be considered frustrated simply because performance has unexpectedly become more expensive or onerous. This is especially true where the other party is innocent of any breach and has no wish to terminate the venture.

When a ship was blocked in the Canal for over two months during the Suez Crisis, the balancing of these competing rights faced the court. The question was whether the charter had been frustrated, given that the alternative route – around the Cape of Good Hope – was appreciably longer than through the Canal.

The Court of Appeal defined the test as one where performance was "radically different" and "positively unjust" to hold the parties to the contract. In this case, the difference in voyage times was not significant (138 as opposed to 108 days). Accordingly, although there was a bunker costs difference, this was not sufficient to frustrate the contract.

1963
The Eugenia

The Eugenia was trapped in the Suez Canal from October, 1956 – January, 1957.

1964
Hellenic Lines

An agreement to bunker developed US law on corroborative evidence admissible to prove the terms of an oral contract.

Hellenic Lines v Gulf Oil Corporation

An oral contract is flimsy in that it is binding only for as long as the parties continue to agree the terms. Given this risk, when an oral agreement was concluded to stem a significant volume of bunkers against a contract of affreightment, Hellenic Lines sent a letter setting out the terms of the agreement. No response or objection to the letter was raised by the counter party oil major. Despite stemming bunkers, in accordance with the agreement, the oil major failed to fix the freight contracts it had agreed. When pressed, the oil major denied the existence of the contract.

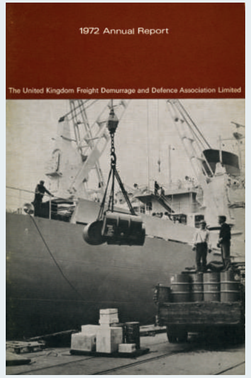
The existence of the agreement and the admissibility of the confirming letter as evidence of the terms of an oral agreement exercised several courts. The matter was eventually considered by the US Court of Appeals, which recognised the obligation (and evidentiary onus) on the oil major to justify its silence in response to the letter. The decision is cited in texts and judgments as a limited, but recognised, exception to the hearsay rule in the US.

1970s

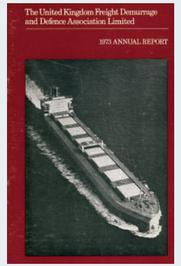
The oil crisis resulted in a significant rise in charterer insolvencies and bunker disputes. In the US, the arrest of ships for a wide range of claims was enabled by the US Liens Act. The concept of the Mareva injunction was developed. The Merchant Shipping and Arbitration Acts of 1979 reflected, respectively, developments in the industry and the trend to arbitration.

HIGHLIGHTS

1970
Annual Report of the Association



1972
Annual Report of the Association



1973
Annual Report of the Association

1979
Rules of the Association

The Aspa-Maria

Because the vagaries of shipping can make estimating a redelivery date difficult, the common law impliedly – and many charters expressly – allow a tolerance around the identified redelivery date. Should this tolerance be included as part of an option to extend a charter by its original period? In this case, the charterer exercised its right to extend the charter by the original period (expressed as 6 months *30 days more or less*). The question arose: did this amount to a total of 12 months and 60 days?

This case established that a tolerance period is not the same as a charter period. Thus, in this instance, the charter period was 12 months and 30 days. Given the frequency of such options, the decision defined the treatment of standard NYPE (and similar) terms.

1976
The Aspa-Maria

The Court of Appeal considered the interpretation of an agreed tolerance period around the redelivery date when the charterer exercised its right to extend the charter.

1977
The Laconia

The House of Lords established the principle that hire must be paid when due and a late payment is not a contractual payment.

The Laconia

Although an owner is entitled to terminate a charter against non-payment of hire, it had been generally considered that a late payment - made before a notice of withdrawal had been served by the owner - remedied this breach of a material term. In a challenge to this orthodoxy, the House of Lords was asked to determine if the right to withdrawal was, in fact, thwarted by a payment notice to the owner's bank.

The court, overruling existing precedent, enshrined the principle that hire must be paid when due and a late payment is not a contractual payment. Thus the owner was entitled to withdraw the ship. The court also set out what are now standard rules for the payment of hire-such as the duty to pay in advance should the defined payment day fall on a non-banking day.

The case also described guidelines for the treatment of the then early forms of electronic banking which are still applicable today.

1977

The Aegnoussiotis

The exercise of a lien over cargo by an owner for non-payment of hire is problematic when the cargo belongs, not to the defaulting charterer but a third party (most often the bill of lading holder). In this decision, the court teased out and reconciled the competing rights of an owner, a time charterer and cargo interests, by making clear that a time charterer had a contractual obligation to secure the owner's rights to lien over cargo which belonged to a third party. The case established that, in certain circumstances, third party cargo could be liened – in contrast to earlier decisions that prohibited the exercise of such lien.

The judgment also defined the terms that should be included in a withdrawal notice served on a charterer – namely, that the charter was being terminated for non-payment of hire – to ensure that subsequent actions by the owner (such as discharging cargo) could not be regarded as affirming the contract and thus waiving the breach. The court also pointed out that a ship cannot "temporarily" be withdrawn – the act is final and certain.

QUEEN'S BENCH DIVISION
(COMMERCIAL COURT)

July 30, 1976

AEGNOUSSIOTIS SHIPPING
CORPORATION OF MONROVIA
v.
A/S KRISTIAN JEBSENS REDERI OF
BERGEN

(THE "AEGNOUSSIOTIS")

Before Mr. Justice Donaldson

1977
The Aegnoussiotis

There usually needs to be a reconciliation of competing interests whenever an owner seeks to exercise a lien over cargo.

1980s

The Association observed meaningful judgments in the interpretation of the NYPE off-hire clauses and the concept of *forum non conveniens*. Developments in electronic banking were reflected in decisions relating to payment of hire. The interpretation of many different clauses dealing with the payment of additional war risk premiums resulting from the hostilities between Iran and Iraq continued to present challenges especially given the surprisingly few awards in England or the US. The concepts of recoverability of economic loss were further developed by the courts.

HIGHLIGHTS

1981
Rules of the Association

1985
An arbitrator as depicted in the publication "An introduction to the UK Defence Club"

1987
Rules of the Association

1988
The Association celebrated its centenary

The Alaskan Trader

The vexing question of when a party is entitled to maintain a charter arose when the owner had withdrawn the ship for several months repair, which the charterer regarded as terminating the charter. This was not accepted by the owner, who treated the contract as continuing for eight months after her return to service (to the completion of the nominal remaining period.)

During this time, the ship and crew remained idle – ostensibly awaiting the charterer's instructions. The court found that the owner had no legitimate interest (other than claiming damages) in maintaining the charter for so extensive a period, even if the charterer had been in breach.

The case introduced an important "fetter" – in extreme cases – against the generally accepted election available to an innocent party to confirm and continue a contract, or treat a repudiatory act as terminating the venture.

1983
The Alaskan Trader

A valuable qualification on the rights of an innocent party faced with a serious breach of contract.

1984
The Antaios

An important decision emphasising general principles in the interpretation of individual contract terms.

The Antaios

A charterparty (such as the NYPE) may give an owner a right of withdrawal against "any breach" of charter. Withdrawal is a serious step and terminates the charter. A right to terminate normally only arises on breach of a term that is regarded as going to the root of the contract, and not for breach of a lesser obligation, which gives rise to a claim for damages – whilst the contract continues.

Accordingly, it was important to determine whether parties could contractually expand, beyond general principles, the right of an owner to terminate the contract in the face of the breach of a minor term by the charterer. The House of Lords delivered an anticipated, but nonetheless valuable, clarification on the point. Breaches which are repudiatory, and not simply trivial, fall within the phrase "any breach of this charter" and give rise to a right of withdrawal.

1987

The Cambridgeshire

The unexpected and extensive corrosion of a ship's holds arising from the carriage of Canadian yellow elemental sulphur was, apparently, unknown to the industry at this time. When the ship required extensive repairs to her holds and hatch covers due to corrosion during slightly longer than usual voyages, the owner sought damages from the charterer.

It emerged in litigation that the charterer was aware of research – conducted by the Canadian sulphur industry – which identified the corrosive characteristic of the cargo in certain circumstances. The report had been deliberately kept confidential to avoid any increase in freight rates for Canadian sulphur.

The charterer strenuously fought to transfer London proceedings to Canada and exclude access to materials revealing knowledge by the industry of this cargo's characteristics.

1987
The Cambridgeshire

The House of Lords took account of the Association's role as financier of the litigation.

The issues eventually rose to the House of Lords, which took the opportunity to consolidate existing (and not always harmonious) case law on *forum non conveniens*, settling the law on this important principle. One of the factors the court considered in maintaining proceedings in England was the fact that this Association as financier was *dominus litis* – a dominant party to the suit and situated in London.

The doctrine of *forum non conveniens* – as defined by the court – has since been adopted in numerous jurisdictions, including Canada.

1987

The Lips

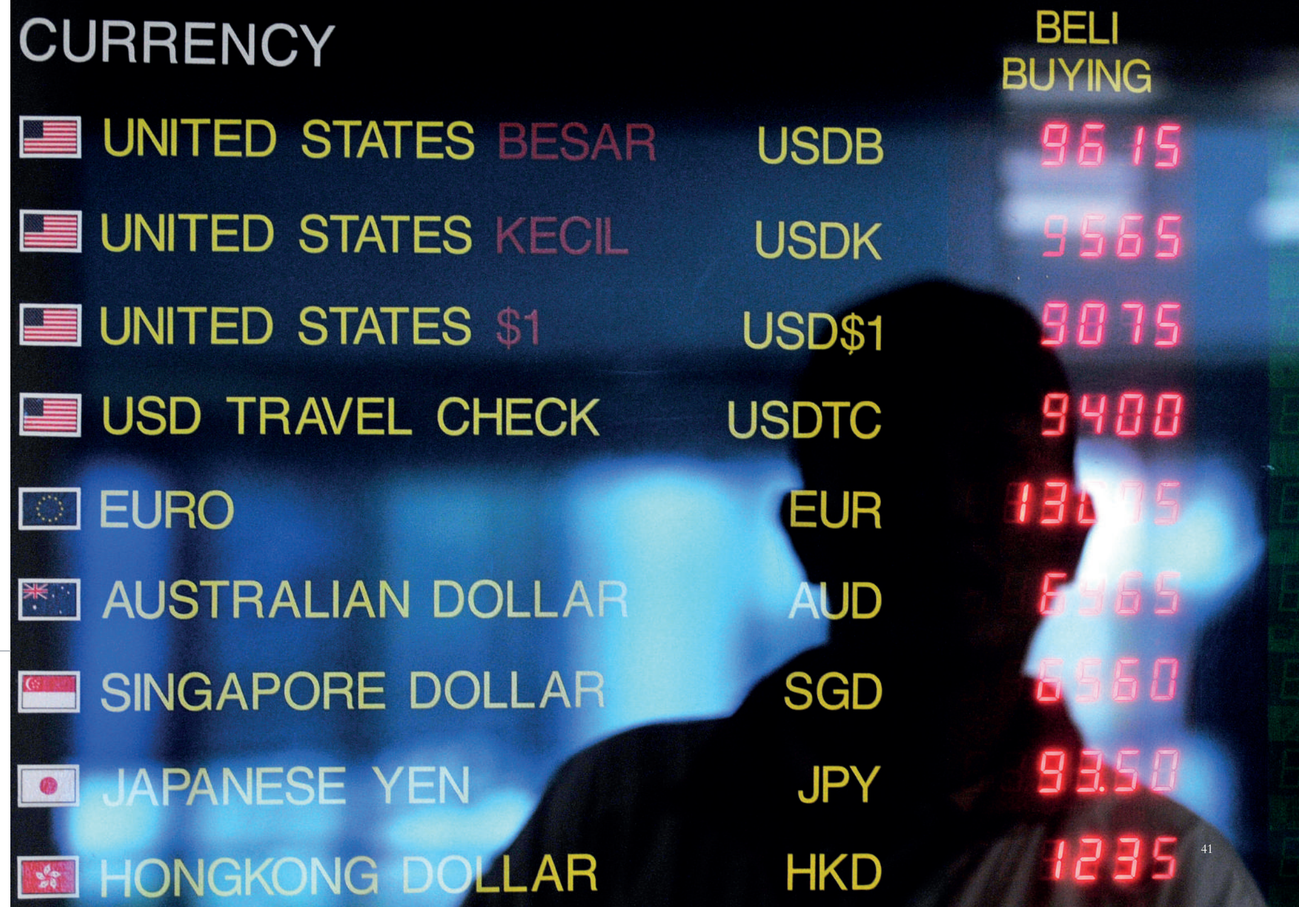
It fell to the House of Lords to determine whether exchange control losses resulting from the late payment of demurrage by a charterer could be recovered as damages. The court set out a number of principles, not just in respect of recoverable damages generally, but also on the assessment of demurrage. Exchange control losses from delayed payment cannot be awarded as damages. Rather, courts have an inherent ability to award interest from when a debt is due.

Further, reference to "settlement" of demurrage in a charterparty should be read to mean the date on which the quantum is determined between the parties, and not when payment is made.

The court also resolved a debate about the nature of demurrage, pointing out that it was, essentially, a liquidated damages clause for a breach by a charterer occasioned by the continuing detention of a ship beyond her agreed laydays. It was not, as had been thought, a contractual debt arising from the exercise of a right to detain the ship.

1987
The Lips

The Court of Appeal held, inter alia, that exchange control losses from delayed payments cannot be awarded as damages.



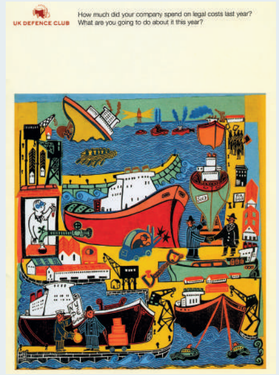
1988

The risks to shipping during the Iran-Iraq conflict yielded important cases on the nature of a contractual waiver and the lawfulness of a refusal to enter into a dangerous location.

Problems inherent in the use of standard ship sale contracts became apparent. Arbitration had established itself as the usual mechanism for dispute resolution, but resulted in surprising outcomes in certain jurisdictions. The Arbitration Act 1996 sought to consolidate English arbitration law and procedure. The rights and obligations created by a charterer's orders became more clearly defined.

HIGHLIGHTS

1990
Rules of the Association



1995
"How much did your company spend on legal costs last year? What are you going to do about it this year"

1999
Rules of the Association

1999
UKDC News highlighting the holding in Greece of the Association's Annual General Meeting

1990

The Kanchenjunga

When the owner accepted voyage orders to Kharg Island during the Iran-Iraq War – despite a clear charter provision for a safe port – the risk of waiver of a right to damages or to terminate was revealed. The owner tendered Notice of Readiness on arrival, but put to sea when the island came under an aerial bomb attack. When the charterer ordered the ship back to the berth, the owner refused – with each party arguing the other had repudiated the charter.

The dispute rose to the House of Lords, which pointed out that, although the port was unsafe, by proceeding to the berth and tendering Notice of Readiness, the owner had acted in a manner inconsistent with its entitlement to refuse the instructions. This gave rise to a waiver of its right to refuse the order, even though the order was wrongful. The court's description of the legal nature of waiver has been reflected in innumerable subsequent decisions.

1990
The Kanchenjunga

The House of Lords held that although the owner had waived its right to refuse the order to go to Kharg Island it had not waived its right to claim damages from the charterer.

The Tiburon

The Tiburon was mistakenly declared by brokers as German owned, when this was not the case. When she was subsequently struck by an Exocet missile whilst at Kharg Island, certain Lloyd's underwriters declined cover on the basis of the innocent misdeclaration.

This declination was found by the court to be lawful. Consequently, the owner was obliged to seek recourse for this significant claim against its brokers, in negligence. The case reflected the duty of a broker to properly represent the interests of its principal and the inherent risks borne by an owner in reliance on its broker.

1990
The Tiburon

Kharg Island as pictured by astronauts onboard the International Space Station.

1993

The Product Star

When an owner has wrongfully repudiated a charterparty, the general measure of damages is the difference between the market rate and the lost charter rate (if lower). In this case, the owner cancelled the charter due to unreasonable fears of escalated danger in the Persian Gulf during the Iran-Iraq War. The charterer substituted the charter with its own ship.

The Court of Appeal clarified the right to damages by recognising that the charterer should not be penalised for using its own ship, instead of chartering in the market at a clearly defined rate. Instead, the concept of a reasonable theoretical fixture was developed, against which the charterer was entitled to measure its damages for the loss of the opportunity to use the owner's ship at a lower market rate.

The case also defined the obligations on parties when exercising a contractual right of discretion. The court defined the now familiar criteria of: honesty, good faith, regard to the contract terms and not acting arbitrarily, capriciously or unreasonably.

1993
The Product Star

The Court of Appeal considered a number of issues arising from the repudiation of the charter including the fact that the danger in proceeding to the Port of Ruwais was no greater than that at the time the charter was entered into.

The Niobe

Recent Saleform versions place no obligation on a seller to report to its classification society any matters that might affect a ship's class. Given that a buyer is entitled to a ship without any class condition or recommendation, this is a material consideration. For this reason, earlier versions of Saleforms contain an obligation on a seller to report to its classification society any matter that might affect the ship's class. This does not appear in later editions, which is why the relevant NSF 83 provisions are often incorporated by the parties if a later version of the NSF contract is chosen. Thus, this decision by the House of Lords is often incorporated into contemporary ship purchase agreements. The court rejected an arbitration tribunal's finding (under NSF 83) that a seller need only notify class of matters arising after the sales contract had been concluded. That finding seems to be based upon a rather wooden reading of the clause.

The court, however, examined the clause against the general notification provisions in the contract, holding that the obligation of notification extended to pre-contractual matters affecting class. The decision clarified a material aspect of any sales agreement.


MEMORANDUM OF AGREEMENT

SALEFORM 1983

Dated:

hereinafter called the Sellers, have today sold, and

hereinafter called the Buyers, have today bought

Classification:

Built: by:

Flag: Place of Registration:

Call sign: Register tonnage:

Register number:

on the following conditions:

1995
The Niobe

The House of Lords adopted a commercial, and not strictly legal, analysis of a material obligation on a seller in a ship sale context.


MEMORANDUM OF AGREEMENT

SALEFORM 1987

Dated:

hereinafter called the Sellers, have today sold, and

hereinafter called the Buyers, have today bought

Classification:

Built: by:

Flag: Place of Registration:

Call sign: Register tonnage:

Register number:

on the following conditions:

1999
The Bay Ridge

The court considered whether negotiations, assisted by a broker, had resulted in a binding contract.

The Bay Ridge

It is not usual for a Saleform to provide a detailed description of a ship and for the terms of the contract to be negotiated through brokers. Often the main terms are captured in a recap by brokers, with certain provisions left for final determination. Whilst this might amount to a firm opening offer, it can be dependent upon acceptance of terms that are yet to be defined.

Although many sale and purchase agreements are restricted to their facts, this decision provided a salutary caution about the capacity of brokers and the need for clear agreement of all material terms before a binding contract of sale comes into existence.

The Cherry Valley

A tropical storm with 25-foot waves threatened to swamp a US tug towing a NASA external fuel tank, intended for a scheduled shuttle launch, on a specially adapted barge. For nearly three days, the CHERRY VALLEY supported and anchored the tug and barge in high seas – with mooring lines ensuring they were not overwhelmed – until conditions permitted additional tug support.

At the time, the resulting US$6.4 million salvage award (subsequently reduced on appeal) was the highest in US legal history, representing the considerable risks taken by the ship together with the respective values of the fuel tank and, to a significantly lesser extent, the tug and barge.

1995
The Cherry Valley

US$6.4 million salvage award was the largest in US history at that time.

1999
Italian arbitration

Italian arbitrators' fees are based on a percentage of the claim

Italian arbitration

An unreported decision highlights the way in which arbitration practice and costs can vary from jurisdiction to jurisdiction. A dispute arose between an owner and a yard for the latter's failure to convert a ship within two negotiated deadlines. The owner advanced its claims in the agreed forum of Italian arbitration. The arbitrators found for the owner.

However, the case revealed the practice of Italian tribunals to charge, as their costs, a percentage of the disputed amount. Thus, the Association was required to remit a significant amount in arbitral fees to secure the award to which the owner was entitled. The tribunal ultimately found in favour of the owner, however, ordered each party to bear its own costs.

2008

The Association observed the reconciliation of recently expanded port state security regulations into charter contracts, the difficulties of compliance with anti-technicality clauses and the court handed down an important decision on the nature of contractual damages.

The years immediately following the financial crisis of 2008 were dominated by disputes involving defaulting counterparties and the premature redelivery of ships which gave rise to some very significant claims both for Members and the Association itself. There were also several significant and costly shipbuilding disputes.

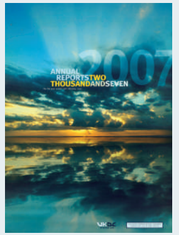
A new regulatory framework was introduced by the Financial Services Authority, and the Association's cover was reclassified from marine insurance to legal expenses insurance.

The Association introduced its "Value for Money" initiative to limit significant increases in legal costs.

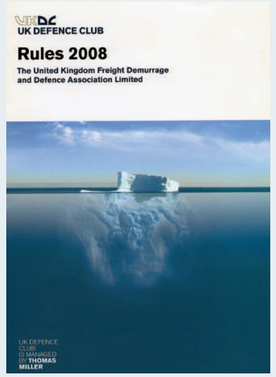
HIGHLIGHTS

2004
Rules of the Association

2005
Rules of the Association



2007
Annual Report of the Association



2008
Rules of the Association

The Western Triumph

In this case, the Court of Appeal described the now notorious requirement that an anti-technicality notice is invalid if issued before hire is due. So strictly are such notices construed that it will remain invalid if sent before hire is due, even if received by the charterer after payment is out of time.

The case highlighted the need to follow closely the exact terms of an anti-technicality notice. An anti-technicality clause defines a rigid procedural structure against which any protest for non-payment of hire will be evaluated – and often invalidated.

2002
The Western Triumph

An anti-technicality notice is not valid until hire has fallen due.

2005
The Bunga Saga Lima

Acceptance of a ship, in knowledge of the condition of the holds, estopped the charterer from subsequently claiming time lost and expenses incurred in cleaning the holds to grain-clean standard.

The Bunga Saga Lima

It is trite law that a charterer is entitled to reject a ship proffered for delivery if she is defective in some material manner. If the ship is nevertheless accepted, a right to damages normally arises. However, the right is fragile and must be carefully protected. In this case, the ship's holds were not grain-clean on delivery. The charterer accepted delivery, in partial reliance on a clause placing the ship off-hire for cleaning after delivery. However, as the first cargo did not require her to be grain-clean, she was put into immediate service. After discharge of her first cargo, she was cleaned to grain-clean standard.

The off-hire clause only operated at the delivery port, so did not assist the charterer. This led to the more generally relevant question of damages for an acknowledged defective delivery. The court found, significantly, that acceptance of the ship in knowledge of her condition was an unequivocal message that the owner did not need to comply with the grain-clean requirement. Accordingly, the owner was entitled to claim hire whilst the holds were being cleaned after discharge of the first cargo. Given the frequency of disputes over the condition of a ship on arrival, the decision reminds parties how an estoppel can neutralise a perceived right of action.

The Kitsa

A dispute over whether the owner or charterer was responsible for hull fouling yielded a useful conceptual framework for assessing the parties risks, and hence, liabilities. A charterparty encapsulates a wide range of trading operations, each with their associated risks and obligations. These risks are allocated by express terms or by the practice of the parties. Thus (as happened in this dispute) if a long stay at a warm-water port was permissible under the charter, the risk of fouling is regarded as falling onto the owner – unless deflected by a clear charter term. So too do the consequences of this consent to a risk, such as resulting impeded performance (due to fouling).

In this case, the court upheld the finding of arbitrators that the ship could be placed off-hire for cleaning and that the owner was liable for an underperformance claim. The decision is regularly cited as the standard manner to determine charterparty obligations.

2005
The Kitsa

The Court considered apportionment of liability for hull fouling during a prolonged stay in warm waters.

2006
The Doric Pride*

The Court of Appeal considered that the owner should bear any losses of the ship awaiting security clearance from the USCG.

The Doric Pride

When the ship was targeted by the US authorities and detained for a detailed assessment this gave rise to a new form of delay caused by implementation of security measures by a port. At the time, she was performing a time charter trip and the issue of costs for the lost time fell to be determined.

Normally, the charterer bears the risk of delays under a time charter, and this appeared to offer a standard defence to the owner. However, the Court of Appeal drew a line between delays arising from matters which could fairly be categorised as the responsibility of the owner; and those which could be regarded as the responsibility of the charterer. Issues arising from the ship's status lay on the owner's side of the line, whilst – in contrast – matters resulting from trading fell to the charterer. In that case, the ship's security clearance was an issue of status which was regarded as an inherent characteristic of the ship. Consequently, the loss fell to the owner and an important qualification to a standard rule on hire was defined.

*Image: United States Coast Guard National Security Cutter WAESCHE.

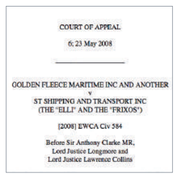
The Greek Fighter

This interesting decision highlighted the risks to ships that might unwittingly be involved in breaching sanctions regulations. The ship was being used as a mothership to hold oil for discharge to smaller tankers, also controlled by the charterer. She was arrested and ultimately auctioned by the United Arab Emirates' authorities for holding oil from Iraq in breach of UN sanctions. The court restated the absolute obligation of a charterer to provide only lawful cargo, thus removing a defence of ignorance relied upon by the charterer.

The case has also opened up a debate about whether a port might be regarded as unsafe if a ship cannot reasonably be released from arrest upon application to the local courts.

2006
The Greek Fighter

The court found that the charterer had an absolute obligation to provide lawful cargo and ignorance as to its legality was no defence.



COURT OF APPEAL

6; 23 May 2008

GOLDEN FLEECE MARITIME INC AND ANOTHER
v
ST SHIPPING AND TRANSPORT INC
(THE "ELLI" AND THE "FRIXOS")

[2008] EWCA Civ 584

Before Sir Anthony Clarke MR,
Lord Justice Longmore and
Lord Justice Lawrence Collins

2007
The Elli & The Frixos

The Court of Appeal extended the concept of physical fitness to also include the legal fitness of a ship to carry her intended cargo.

The Elli & The Frixos

Following the changes to MARPOL regulations, these two ships potentially became non-compliant due to a small area of single-hull. The issue arose whether the ships, which had been fully described in the charter, were now non-contractual. The Court of Appeal held that the owners had a continuing obligation to ensure the ships complied with all legal and regulatory matters affecting the ships' ability to perform the services required of them.

The Court of Appeal extended the concept of physical fitness (such as seaworthiness) to also include legal fitness to carry her intended cargo.

2007

The Golden Victory

The charterer had prematurely terminated the charter by four years. However, when the case went to arbitration three years later, on the assessment of damages, the Gulf War had intervened. This would have allowed the charter (if it was still operational) to be terminated.

The issue was whether damages should be computed over the remaining charter period of four years, or the much shorter period of just over one year, when the war broke out (and the termination clause was invoked).

The House of Lords was split – by three judges to two – with the majority holding that damages are intended to place an innocent party in the same position as if the contract had been properly performed. This creates the fiction of a continuing contract against which post-repudiation events can be measured. If the contract included an early termination event, then damages could be calculated only up to the defined event. The parties would not be in the same position, as if a breach had not occurred, if the contract was regarded as continuing beyond this event.

Thus, the owner was not entitled to hire for the uncompleted period of the defined charter. The decision modified the convention that damages are assessed as of the date of breach.

2007
The Golden Victory

The judgment of the House of Lords attracted significant comment however has become embedded in to the general law of contractual damages.

HOUSE OF LORDS

14–15 February; 28 March 2007

GOLDEN STRAIT CORPORATION
v
NIPPON YUSEN KUBISHKA KAISHA
(THE "GOLDEN VICTORY")

[2007] UKHL 12

Before Lord BINGHAM of CORNHILL,
Lord SCOTT of FOSCOTE,
Lord WALKER of GESTINGTHORPE,
Lord CARSWELL and
Lord BROWN of EATON-UNDER-HEYWOOD

Charterparty (Time) — Damages — Each party having right to cancel charter in event of war between UK and Iraq — Charterparty to terminate in 2005 — Repudiation of charterparty by charterers in 2001 — War breaking out in 2003 — Owner's measure of damages — Whether damages ran from date of repudiation to outbreak of war in 2003 or from date of repudiation to later date on which charterparty due to terminate — Arbitration Act 1996, section 69.

Golden Strait Corporation (owners) chartered their vessel *Golden Victory* to Nippon Yusen Kubishika Kaisha (charterers) for a period of seven years with one month more or less in NYKK's option. The earliest date on which the vessel could be redelivered was 6 December 2005.

Clause 33 of the charterparty provided that both

The arbitrator found that the second Gulf War was a "war" within clause 33 of the charterparty such as to give either party the right to cancel it; that at 17 December 2001, a reasonably well-informed person would have considered war between the United States/United Kingdom and Iraq "merely a possibility" but not "inevitable or even probable"; and that the charterers would have cancelled the charterparty relying on clause 33 had the vessel remained on charter to them at the outbreak of the second Gulf War on 20 March 2003. He accepted the owners' submission that the second Gulf War was irrelevant to their claim, but regarded himself as constrained by *BS&N Ltd v Micado Shipping Ltd (The Seaflower)* [2000] 2 Lloyd's Rep 37 to decide otherwise.

The owners' appealed to the High Court on a point of law under section 69 of the Arbitration Act 1996.

The owners submitted that in a case of an accepted repudiation of a long-term charterparty where there was an available market at the date of repudiation, the rule was that damages should be assessed at the date of repudiation as the difference between the contract rate and the market rate for chartering a substitute ship for the balance of the charter period. Events subsequent to that date were irrelevant in the assessment of the damages since the loss was crystallised at the date of repudiation, and the only exception was where the subsequent event could be seen at the crystallisation date to be inevitable or "predestined".

The charterers contended that although damages were normally assessed as at the date of the breach, that was not an absolute rule. The available market provided the test for what was required of the innocent party by way of reasonable mitigation of his loss. It fixed the maximum claim unless there was a claim to special damages. Where there was a suspensive condition such as a war clause, the duration of the charter was always

2008

The Silver Constellation

The accreditation by oil majors is an important determinant of a ship's scope of trade and has a direct bearing on her earning capacity. In this case, the question arose in respect of Rightship and whether such approval falls within the general obligations of an owner to maintain a ship's certifications, comply with laws and regulations and follow a charterer's directions.

The decision yields two important legal principles. First, that if an express clause is absent, there is no obligation on an owner to maintain such accreditation. Second, the court set out the limited circumstances when pre-contractual negotiations are admissible, providing an understanding of the conceptual framework from which the charterparty language is drawn.

2008
The Silver Constellation

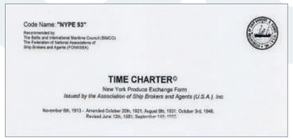
The court considered that in the absence of an express provision in the charter the owner was not obliged to obtain and maintain Rightship approval.

2009

The TS Singapore

The inter-relationship between law and fact was evident in this off-hire decision. After colliding with a breakwater, the ship followed her scheduled route for repairs ordered by class, where she discharged her cargo intended for another port. The principles applicable to off-hire were restated, specifically that to earn hire, a ship should be available to the charterer for loading and discharging cargo.

She was not, in fact, available to the charterer whilst sailing for repairs. Significantly, the court interpreted the off-hire provisions as a function of the commercial purpose of the charter. Proceeding in the general direction of a port was not the same as proceeding to the designated port, and the ship had placed herself off-hire as a result.


Code Name: "NYPE 93"

TIME CHARTER©

New York Produce Exchange Form

Issued by the Association of Ship Brokers and Agents (U.S.A.), Inc

2009
The TS Singapore

The court found that proceeding in the general direction of a port was not the same as proceeding to the designated port.

UK DEFENCE CLUB

Issue 9, July 2009

soundings

In this issue: Financial Results 2008/9 | "To" Shanghai or "towards" Shanghai | Penalty or not?

TS Singapore - "To" Shanghai or "towards" Shanghai...

2008

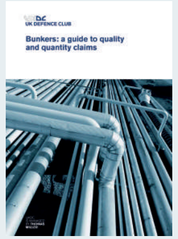
In the most recent years the effects of the 2008 financial crisis have continued to be felt. Members sought to secure their positions at an early stage in disputes especially in cases concerning defaulting counterparties. Many of these disputes were subject to London arbitration proceedings, however some were also heard by tribunals in the US, Hong Kong and Singapore.

Cases involving piracy have also been a feature and of great concern to the industry generally.

The Association issued publications on key issues including shipbuilding contracts, bunker claims, counterparty risk and the assessment of damages.

HIGHLIGHTS

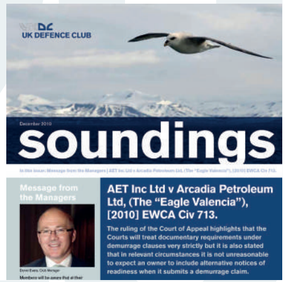
2010
Publication – Shipbuilding Contracts – the Value of Defence Cover



2011
Publication – Bunkers: a guide to quality and quantity claims

2012
Publication – Minimising Counterparty Risk

2013
The Association celebrates its 125th anniversary



2010
The Eagle Valencia

The Association issues regular Soundings bulletins to highlight significant cases and legal developments.

The Eagle Valencia

The approach of the courts in interpreting demurrage and time-bar provisions was underscored in this decision. The court had to grapple with somewhat inelegant provisions in the Shellvoy 5 Form, before ultimately finding against the owner. An attempt by the owner to rely upon an alternative NOR was also regarded as time-barred for lack of supporting documentation.

The decisions are salutary and have resulted in the rather burdensome practice of multiple tendering of NORs to ensure that any defects are quickly remedied.

2010
The Saldanha

The court considered whether the NYPE off-hire clause applied to detention by pirates.

The Saldanha

Whether the NYPE off-hire clause applied when a ship was detained by pirates was considered in this recent decision, providing much anticipated and needed guidance to the shipping community.

The charterer had placed the ship off-hire for the duration of the detention, but faced difficulty in bringing the piracy and hostage event into the language of the off-hire clause. Ultimately, the attempt failed: there was no "default or deficiency of men"; and the detention did not give rise to a general average event – for lack of damage and accident.

Whilst it was possible that the event could, arguably, fall within the scope of "any other cause whatsoever" if included in the off-hire clause, the court pointed out that parties should expressly provide for seizure events if they wish their rights to be certain. Such provisions now appear in the industry-standard BIMCO piracy clause.

The Rainy Sky

The buyer entered into shipbuilding contracts with a yard and paid several instalments of the contract price. The yard had established bank refund guarantees, in respect of such payments, in the event that the buyer was entitled to rescind, cancel or terminate the contract. Neither the contract nor the guarantees envisaged the yard entering statutory insolvency protection and, when this occurred, the buyer sought payment under the guarantees. The bank resisted such demands, arguing on a strict interpretation that insolvency was not specified as an event that triggered liability under the guarantees.

In one of its earliest decisions, the Supreme Court of Appeal in the UK considered the conflicting constructions of the complex provisions in the guarantee. Given that the text yielded reasonable but inconsistent arguments, the court developed a "commercial common sense" test of what a reasonable person would have expected the parties to have intended in their drafting. This purposive approach then considered the general schema of defined triggering events, and held that insolvency fell within the scope of the guarantee.

The case is welcomed as recognising the reasonable business expectation of parties when contracting.

2012
The Rainy Sky

This was the first UK Supreme Court case supported by the Association and was televised live.

"If shipowners wish to be sure that they have readier access to the expertise of this court, they should agree to the High Court resolving their disputes in the first place."

Lord Justice Longmore in the Court of Appeal on hearing the owner's application for leave to appeal.

The Kyla

In this case, the court opined that the law of frustration is evolving from a rules-bound orthodoxy to a more rounded approach which looks beyond the simple text of the clause. This flexibility has yet to find its limits, but its application was evident in the consideration of whether the owner was entitled to treat as frustrated a charter for a ship damaged beyond her value and abandoned by her hull underwriters. The court ruled that the owner was not entitled to treat the charter as frustrated.

A continuing charterparty warranty – that full hull and machinery cover would be maintained up to the ship's insured value – bound the owner to perform, even it this was not commercially sensible.

The case highlights the conflicting interests of an owner in not incurring what it believes to be wasted costs, as well as the entitlement of a charterer to rely upon a clear undertaking in the charter.

2012
The Kyla

Whilst alongside the KYLA was struck by another ship and sustained serious damage.

INTERVIEW

Bob Crawford.

A director from 1976 and Chairman of the Association from 1987 to 1990, Robert Gammie Crawford epitomises the extraordinary depth of experience and expertise that characterises the UK Defence Club's Board of Directors. His distinguished career as a specialist shipping and marine insurance solicitor, managing director and leading light of Thomas Miller mutuals for 78 years remains unrivalled. As the Association's longest-serving director, Bob reveals his thoughts on the value of the Association and its cover to Members.

"My time at the Defence Club was characterised by thoroughgoing debate and discussion over claims, enhanced by the extensive personal knowledge and experience of the owner and senior executive members of the Board," remarked Bob.

When asked to expand, Bob continued, "One of the great strengths of the Board is the wealth of experience that's available round that table. So many times with cases, you would find that at least one if not more of the Board members present would be very familiar with the type of situation. And the wealth of their commercial and technical knowledge is tremendous. It was unlikely that you would encounter a situation where at least one Board member would not have had a similar type of experience, almost anywhere in the world."

"There's also the fact that the Board provides a good representation of all the different types of tonnage – different types of tankers, bulk carriers and container ships. I was always impressed by the extent of the knowledge that was demonstrated, not only of the ships themselves but also the ports they were trading to."

"It's important that Members should realise that the Board comprises professionals who treat every case very seriously. There's no question at all that a lot of homework is done before every case – they certainly knew what they were talking about."

An unrivalled depth of experience

Bob's evaluation of the Association's Board is built on his own extraordinary depth and range of experience across the industry. Born in 1924 and raised in north east Scotland, he attended Robert Gordon's College, Aberdeen, before serving in the RAF from 1942-47. During this time, Bob qualified as a navigator and was posted to South Africa and Germany. Following his demobilisation, Bob was articled to Lewin Gregory Torr & Durnford in London, qualifying as a solicitor in 1950. Having then worked briefly for Thorold Brodie & Mason in Westminster, he moved to Ince & Co to specialise in shipping and marine insurance work. Bob remained there for 22 years, becoming a partner and playing a major role in the growth of Ince's business.

In the limelight, in the know

It was during this period that Bob became heavily involved with major Greek, Turkish and Asian ship owners. These included such leading personalities in international shipping as Aristotle Onassis, C Y Tung and Boris Vlasov. His high profile cases included the Seawise University, formerly the Queen Elizabeth, destroyed by fire in Hong Kong; and the seizure of the Onassis whaling fleet by the Peruvian government.

In 1974, Boris Vlasov persuaded Bob to leave Ince and become – on Vlasov's takeover of the large shipping conglomerate – Group Managing Director of Shipping Industrial Holdings Ltd. The role included the chairmanship of Silver Line Ltd, its principal ship-owning company. Shortly after, Bob became President of the Vlasov group worldwide, based in Monte Carlo.

The personification of professionalism

Alongside his close involvement with the UK Defence Club and other Thomas Miller mutuals, Bob held board and similar appointments with Lloyds Register of Shipping (1982-2004), the Civil Aviation Authority (1984-1993), the Port of London Authority (1985-1992) and Highlands and Islands Airports Limited (1986-1993). He was awarded a CBE in 1990 for services to Scottish aviation.

Bob attended 286 Board Meetings across three Thomas Miller Clubs, highlighting the breadth and extent of his involvement in marine mutuals, a commitment almost certainly unmatched.

It is this range and depth of experience – exemplified by Bob but shared across the Association's Board – that makes the UK Defence Club such a powerful body in protecting Members' interests.

LOOKING FORWARD

Daniel Evans
Chairman,
Thomas Miller Defence Ltd.

As Chairman of Thomas Miller Defence I wish to echo the thoughts of the Chairman and pause to reflect at the contribution that the Association has made to the industry through the assistance that has been provided to Members over the years.

Although the industry has changed over the past 125 years the fundamentals largely remain unaltered – markets are cyclical, regulatory requirements increase, ship design improves, disputes occur. How disputes are resolved however has remained largely unaltered. Arbitration, and in particular London arbitration, remains the principal forum to resolve disputes. A key factor regarding arbitration was that it was always intended to be a quick, cost effective and private means of dispute resolution. It is opportune to note that in 1957 the Association wrote to its Members highlighting that there were a number of drawbacks with arbitration, in particular in more complex cases. A copy of that circular can be found on the opposite page. Notwithstanding the subsequent establishment of the LMAA in 1961 many Members and other service providers comment that arbitration is no longer quick or cost effective and indeed now resembles a quasi-judicial process. As for the confidential nature of proceedings, is this only relevant to the party that prevails?

As highlighted by the Association's Chairman, in his foreword to this book, in this its anniversary year the Association not only wants to look at lessons from the past but also wants to look to the future. We will be canvassing Members in order to seek views on maritime arbitration, in whichever jurisdiction, in particular whether they consider it remains relevant to the industry and its core ideals. There are of course pros and cons to any system, however, given the nature of disputes that Members are now engaged with, is there not a need to make sure that the system that is favoured by the industry remains fit for its intended purpose? Whether insured or not, legal costs can be an important element of any claim and can have a significant impact on a Member's business. For that very reason it is important that this debate is held so that improvements, if they are found to be necessary, can be made for the benefit of the industry now and in the future.

Thomas Miller's involvement with the Association spans the centuries and we look forward to embracing the challenges of the future together.

Daniel Evans
Chairman, Thomas Miller Defence Ltd
Managers of the UK Defence Club

THE
United Kingdom Freight, Demurrage & Defence Associatio
LIMITED

MANAGERS—
THOS. R. MILLER & SON
D. R. MILLER — E. T. JONES
C. T. MILLER — J. E. L. WRIGHT
N. F. LEDWITH — J. D. MILLER
TELEGRAMS: "MUTUALITY, STOCK, LONDON"
TELEPHONE: AVENUE 571 (FOUR LINES)

SECRETARY—
W. STANLEY MITCALFE
C/O INGLEDEW, MATHER & DICKINSON
MILBURN HOUSE, NEWCASTLE-ON-TYNE, 1
TELEGRAMS: "INGLEDEW, NEWCASTLE-ON-TYNE"
TELEPHONE: NEWCASTLE 24029

14/20, St. Mary Axe,
London, EC

31st July, 1957.

Commercial Court.

Dear Sirs,

We think that the attention of British Members should be drawn to the numerous criticisms recently made by Judges in the Commercial Court itself and in the Court of Appeal and House of Lords of the increasing practice of referring commercial disputes to Arbitration. The burden of these strictures is that in cases involving any complexity of law, or indeed of fact, the process of submitting the disputes to Arbitration involves far greater delay and expense than direct recourse to the Commercial Court. These criticisms are in the opinion of the Managers well founded. In cases involving relatively small sums and no substantial point of principle, reference of the dispute to a single Arbitrator may be the most expeditious and least costly method of deciding the issue, but in those cases in which substantial sums are at stake or issues of complexity or importance are involved, recent experience has shown that reference of the dispute to Arbitration results in interposing a more expensive and cumbrous Tribunal, usually composed of two Arbitrators and an Umpire, between the litigants and a final decision; for neither party to an Arbitration can be deprived of his right under our law to require the Arbitrators to frame their award in the form of a Special Case upon any point of law arising during the Arbitration for the decision of the Court, and one or both of the parties usually ask the Arbitrators to do so.

On the other hand, the Commercial Court was founded 63 years ago for the very purpose of affording the commercial community a speedy and inexpensive method of having its disputes tried under a procedure bereft of the technicalities which may delay actions in other Courts and by Judges of long commercial experience.

The Commercial Court has during its history fully justified its constitution and has indeed acquired an international reputation. In recent years, however, the business of the Court has dropped to the hearing of about 30 cases in a year from the previous normal of over one hundred. And a substantial number of these cases have come by way of Special Cases stated by Arbitrators, which the Court has felt compelled to remit to the Arbitrators for further findings of fact in order to clarify the real issues, with consequent further delay and expense to the litigants.

In these circumstances the Lord Chancellor has warned the British Maritime Law Association that it may become impossible to justify the expense and inconvenience of keeping specially trained Judges in London for the purpose of presiding over the Commercial Court. It is felt that the dissolution of this Court would ultimately be a serious loss to the commercial community.

We appreciate that most maritime disputes in this country arise under standard forms of Charterparties containing Arbitration Clauses under which disputes are referred to Arbitration in London, and that it would not be practicable, nor indeed politic, to delete these Clauses from the Charters, for without them foreign parties to the dispute would not be compelled to come to this country to have their disputes decided. It is also well understood that if a dispute arises under such a contract it can only be referred direct to the Commercial Court by mutual agreement. Nevertheless in many cases such agreement can be achieved; and we would urge upon British Members that it is to their advantage that they should endeavour to obtain or should acquiesce in such an agreement in any case of substance in which they may be involved.

Yours faithfully,
THOS. R. MILLER & SON

Managers

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