JUDGMENT : Mr Justice Cresswell : Commercial Court. 25th February 2005

1. This judgment follows a hearing to determine whether or not the claimant's claims against the respondent in an arbitration commenced in July 2004 (under a charter-party based on the "*Shelltime 4*" form) are time-barred. There is also a contingent application under section 12 of the Arbitration Act 1996, which does not arise unless the claims are held to be time-barred.

2. On 11 January 2002, the claimant charterers chartered the product tanker 'CASCO' from the respondent owners for a period of 60 to 90 days +/- 20 days. The terms of the charter-party were contained in a fixture recap and were otherwise on the Shelltime 4 form.

3. Clause 27(a) of the Shelltime 4 form sets out various exceptions, and clause 27(b) provides various liberties. The issue I have to decide relates to clause 27(c) which provides: *"Clause 27(a) shall not apply to or affect any liability of owners or the vessel or any other relevant person in respect of:*

   (ii) any claim (whether brought by charterers or any other person) arising out of any loss of or damage to or in connection with cargo. All such claims shall be subject to the Hague-Visby Rules or the Hague Rules, as the case may be, which ought pursuant to Clause 38 hereof to have been incorporated in the relevant bill of lading (whether or not such Rules were so incorporated) or, if no such bill of lading is issued, to the Hague-Visby Rules."

4. Article III rule 6 of the Hague-Visby Rules provides: *"Subject to paragraph 6 bis the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods unless suit is brought within one year of their delivery or of the date when they should have been delivered."*

5. The claimant's case is set out in detail in its Points of Claim. It is contested by the respondent, but nevertheless it is appropriate to take that claim at face value for the purposes of determining this preliminary issue. The salient features of the case are as follows.

6. The vessel was delivered into the charter-party. She carried a cargo of palm oil from the Far East to Barcelona and Hamburg.

7. On 19 March 2002, the claimant sub-chartered the vessel to Sahara Energy Resource SARL ("Sahara"). The sub-charter-party was based on the Asbatankvoy form and was for a voyage from Rotterdam to West Africa.

8. On 10 April 2002, the vessel completed discharge of the palm oil at Hamburg and proceeded as ordered to Amsterdam. Tank cleaning commenced. The cancelling date was extended under the sub-charter-party to 19 April 2002.

9. NOR was tendered on 19 April 2002. Sahara intended to load gasoline. On 20 April 2002, Sahara's surveyors (Saybolt) boarded the vessel and inspected the tanks. Saybolt issued a letter of protest that the vessel was not *"ready and suitable in every respect to load the intended cargo*".

10. The vessel shifted to another mooring. On 20 April 2002, Sahara cancelled the sub-charter-party. Further cleaning was undertaken after 20 April 2002. On 26 April 2002, Saybolt conducted a further inspection and concluded that the tanks were "*substantially not suitable to load the nominated cargo"*. On the same day Saybolt asserted: -

    "Vessels cargo tanks are in a very poor condition due to the state of the epoxy coating.
    Tankwashing by hot water only was not sufficient.
    Centre tanks 4 and 8 are accepted for lading Gas Oil. All other cargo tanks are rejected for lading Gas Oil/Gasoline ."

    The claimant maintains that the tanks' epoxy coatings were in a poor state.

11. The vessel was re-delivered on 28 April 2003 by mutual agreement without prejudice to any pre-existing claims.

12. The claimant asserts that the respondent is in breach of a number of terms of the charter-party as set out in paragraph 27 of the Points of Claim. As for loss, the claimant alleges: *"By reason of the foregoing the charterers were unable to obtain further employment for the vessel and as a result they were deprived of the use of the vessel for the purpose for which it was to be available to them. As a result, charterers have suffered loss and damage calculated and particularized in schedule 1 hereto by reference to their loss and damage due to the cancellation of the sub-charter and in the sum of US$795,041."*

13. Schedule 1 to the Points of Claim contains three distinct elements. Firstly, net freight under the sub-charter-party is the main element (around 97%) of the claim. Secondly, there is a claim for wasted bunkers. Thirdly, there is a claim for a balance of account on the final hire statement.

14. The respondent contends that the first two claims (but not the third) are time-barred.

15. The claimant accepts that if Art III rule 6 is applicable, the date when the goods should have been delivered would have been sometime in late April/early May 2003. Arbitration was not commenced until July 2004.

THE CLAIMANT'S SUBMISSIONS : Mr Michael Coburn for the claimant/charterers submitted as follows.

16. The charterers' claims are unaffected by clause 27(c)(ii) and Article III rule 6 because: -

    (1) The charterers' claims are not claims "*arising out of any loss of or damage to or in connection with cargo"* within the meaning of clause 27(c)(ii) of the Shelltime 4 form; nor (if it is necessary to go further) are they claims "*in respect of the goods"* within Article III rule 6 of the Hague-Visby Rules.

(II) The charterers' claims are for breaches of charter obligations independent of the Hague-Visby Rules and, on the authority of ***The Stena Pacifica*** [1990] 2 Lloyd's Rep 234, 237rhc, clause 27(c)(ii) of the Shelltime 4 form does not apply to such claims.

17. [If the charterers' contentions are not accepted, the charterers say they would wish to consider whether there are other approaches available to them – claims for reduction of hire under clause 3 of the Shelltime 4 form and/or off-hire under clause 21(a) and/or further claims for wasted hire and bunkers].

Mr Coburn made the submissions set out below under the following headings.

What are claims "arising out of any loss of or damage to or in connection with cargo"?

18. Clause 27(c)(ii) applies only to what can generally be called "*cargo claims*". It refers only to claims sufficiently connected with cargo, that is to say claims (whether original or derivative) of the sort which are normally brought by cargo-interests (bill of lading holders), claiming loss or damage arising in relation to the cargo and measured by reference to the cargo. Included in this category are claims for physical loss of cargo and claims for physical damage to cargo. Also included are claims for financial loss such as (by way of example) a fall in the value of a particular cargo or the costs of storing/transshipping a particular cargo. The focus is on the loss and damage claimed, not on the basis of the liability giving rise to the loss and damage. This follows from the wording of the clause and of the phrase from which it derives (see ***G.H. Renton & Co Ltd v Palmyra Trading Corporation of Panama*** [1957] AC 149). The last "or" is too far from "claims" for the phrase naturally to include "claim[s]….in connection with cargo", as opposed to (e.g.) "claim[s] rising out of any…damage…in connection with cargo".

19. All other claims which do not fall into the category of "cargo claims" are outside clause 27(c)(ii). On any view, there are very many types of potential claim under a time charter which fall outside the scope of the clause.

20. As to the wording and context of the clause, clause 27(c)(ii) is part of a standard charter-party form. The words were chosen specifically for a charter-party context. The fact that the draftsman chose a phrase very similar (but not identical) to one appearing in the Hague and Hague-Visby Rules suggests that he was concerned with cargo claims of the sort which a bill of lading holder and cargo interest might bring. The express reference to clause 38 and "*the relevant bill of lading*" further supports the notion that the clause is concerned with cargo claims of the sort which a bill of lading holder and cargo interests might bring.

21. As to the Hague and Hague-Visby Rules background, the same phrase (minus the *"of"* after *"loss"*) appeared in Article III rule 8 and Article IV rule 5 of the Hague Rules. Article III rule 6 of the Hague Rules (which did not have any express requirement of connection) was held implicitly to require a link to the goods: "*the loss or damage referred to must be loss or damage which is related to the cargo owner's goods.*" (***Goulandris Brothers Ltd v B Goldman & Sons Ltd*** [1958] 1 QB 74 at p 105).

    Article III rule 8 was held to extend beyond merely physical loss or damage (see ***Renton v Palymra*** e.g. at p169 per Lord Morton), – but still in the context of a classic "*cargo claim*" type of loss: i.e. storage and transshipment costs.

    The Stena Pacifica is authority for the propositions that: (i) the general intention of clause 27(c)(ii) of the Shelltime 4 form is that liability for what can generally be called "cargo claims" shall be governed by the Hague or Hague-Visby Rules; (ii) the clause covers most (though not all) of the claims which may be brought by a cargo-owner, and can cover claims for damages by charterers measured by reference to third party cargo interests; but (iii) the clause does not cover claims for damages "*measured otherwise than by reference to cargo*".

What is liability "in respect of the goods" within Article III rule 6 of the Hague-Visby Rules?

22. Guidance comes from ***Goulandris v Goldman*** supra; ***The Standard Ardour*** [1988] 2 Lloyd's Rep 159 (charterers made claims based on the owners' failure to provide a vessel properly equipped to measure cargo quantities, which resulted in a delay in issuing bills of lading after the cargo in question was loaded, which in turn exposed the charterers to a claim by shippers. Saville J held that the claim did not sufficiently relate to the goods – there was no "*loss or damage to or of or in connection with the goods",* to use the phrase in ***Goulandris*** (see p162)); and ***The Marinor*** [1996] 1 Lloyd's Rep 301.

Are the claims within clause 27(c)(ii) and Article III rule 6?

23. Neither clause 27(c)(ii) nor Article III rule 6 applies to the main claim. The claim is not a "*cargo claim"*. It is not a claim by cargo interests, nor is it a claim based on any loss suffered by cargo interests. The ownership, condition and value of the intended cargo are irrelevant to the claim. It is also irrelevant what actually happened to the intended cargo. The charterers had no interest in any of these aspects and do not measure their loss by reference to them. The charterers' interest was in earning income by using the services of the ship, and their loss lay in not being able to do so.

24. It was not the particular cargo but rather the sub-charter-party which determined the freight payable. Any contractual cargo would have done as well, and indeed deadfreight would have been payable in the event of a shortfall. If the facts were precisely the same save that the sub-charter-party was for a time charter trip rather than a voyage charter-party, the charterers' claim would be for a hire differential for the estimated duration of the trip – cargo quantity would not feature in the calculation at all. Such a claim would not be time-barred.

25. The claim for wasted bunkers is not time-barred. The claim is that bunkers were wasted while the ship took longer to clean her tanks than she should have done.

Does clause 27(c)(ii) apply to breaches independent of the Hague or Hague-Visby Rules?

26. The charterers rely on the Stena Pacifica at p237rhc. The reasoning of Evans J is sound and supported by the limited nature of the incorporation (by clause 27(c)(ii)) of the Hague-Visby Rules. The clause starts by disapplying clause 27(a) to claims which fall within sub-clause (ii). It does not disapply the entire rest of the charter to such claims. It follows that the charterers are intended to retain, even in relation to "*cargo claims",* the right to claim for breach of independent charter obligations (e.g. provisions governing pumping performance). Such claims, as Evans J noted, cannot be made "*subject to"* the Rules except in a one-sided (pro-owner) way.

Are the breaches of obligations independent of the Hague-Visby Rules?

27. The charterers assert breaches of obligations under clauses 1 & 2, which have been amended so as to become, on the face of things, absolute obligations applying throughout the charter period; on clauses 12 and 13 as regards compliance with instructions and orders; on clause 44 as regards specific tank cleaning obligations; and on clause 82 as regards the vessel's description (epoxy coating). None of these obligations derives from or simply mirrors anything in Article III of the Hague-Visby Rules.

THE RESPONDENT'S SUBMISSIONS : Mr Nathan Tamblyn for the respondent/owners submitted as follows.

28. This claim is one arising in connection with cargo. It is a claim that the vessel was not clean enough to receive a particular cargo, as a result of which that particular cargo was lost, for which is claimed the loss of freight to be earned on that particular cargo. It is a claim for uncargoworthiness as regards a particular cargo of gasoline. The claim for wasted bunkers is conditional upon the claim for loss of freight, and is also time-barred.

29. As to ***the Stena Pacifica***, Mr Tamblyn submitted that the analysis of Evans J was wrong in a number of respects.

30. It is (he argued) the substance of the claim, as shown by the quantification of loss, which determines whether it arises in connection with cargo, and not the face value assertion that a charter-party term only (e.g. as to pump performance) has been breached.

31. In any event in the present case, (Mr Tamblyn submitted) the substance of the claim is uncargoworthiness, which in fact is co-extensive with the owners' obligations under the Rules. The suggestion that the charter-party terms are stricter does not accord with the view in Time Charters 5th edition (2003) para 38.129. Also, co-extensiveness is a matter of substance, not strict linguistics – however pleaded.

32. While confirming that ***The Stena Pacifica*** is the only reported decision on clause 27(c)(ii) of the Shelltime form, Mr Tamblyn referred to the following authorities which he said were also relevant: -

G.H. Renton & Co Ltd v Palmyra Trading Corporation of Panama supra; ***Goulandris v Goldman*** supra (Pearson J); ***Adamastos Shipping Co Ltd v Anglo-Saxon Petroleum Co Ltd*** [1959] AC 133, HL; ***The Standard Ardour*** supra (Saville J); ***The Ot Sonja*** [1993] 2 Lloyd's Rep 435 (CA); ***The Marinor*** supra (Colman J); ***The Stolt Sydness*** [1997] 1 Lloyd's Rep 273 (Rix J); ***The Seki Rolette*** [1998] 2 Lloyd's Rep 638 (Mance J); and ***Linea Naviera Paramaconi S.A. v Abnormal Load Engineering Ltd*** [2001] 1 Lloyd's Rep 763 (Tomlinson J).

33. As to ***the Marinor***, Mr Tamblyn submitted that it was held that where the Rules were incorporated by general words into a time charter, owners can rely on the time bar against claims for breach of any charter-party term, even if not co-extensive with the Rules. This (submitted Mr Tamblyn) is contrary to the decision in The ***Stena Pacifica.*** In the present case, the cargo which was not shipped was identified, and the vessel was under instructions for that voyage. That provides a sufficient connection with the cargo. Accordingly, the owners can rely on the time bar for any claim for breach of charter-party. Despite the fact that ***the Stena Pacifica*** was a decision on the Shelltime 4 Form the reasoning in ***The Marinor*** shows that co-extensiveness is something of a heresy.

34. As to Abnormal Load Tomlinson J set out the simple test: - "*…does the loss in respect of which the claim is brought relate to goods which were either shipped or intended to be shipped pursuant to the contract*?"

That is precisely the same question as in the present case, whether the claim arises in connection with cargo. The owners satisfy that test. The claim is time-barred.

Mr Tamblyn's submissions concluded as follows. The claim will be time barred if it is arises in connection with cargo which can be identified, whether shipped or not. In the present case, the claim is based on the vessel not being clean enough to receive a particular cargo, as a result of which that particular cargo was lost, for which is claimed the loss of freight to be earned on that particular cargo. The claim is time-barred. There is no evidence either that the potential application of the time bar was not in the reasonable contemplation of both parties, or that it is just to extend time.

ANALYSIS AND CONCLUSIONS

35. **(1)** Clause 27(a) of the Shelltime 4 form sets out various exceptions, and clause 27(b) provides various liberties. The issue I have to decide relates to clause 27(c) which provides:

"Clause 27(a) shall not apply to or affect any liability of owners or the vessel or any other relevant person in respect of:

(ii) any claim (whether brought by charterers or any other person) arising out of any loss of or damage to or in connection with cargo. All such claims shall be subject to the Hague-Visby Rules or the Hague rules, as the case may be, which ought pursuant to Clause 38 hereof to have been incorporated in the relevant bill of lading (whether or not such Rules were so incorporated) or, if no such bill of lading is issued, to the Hague-Visby Rules."

36. Article III rule 6 of the Hague-Visby Rules provides: "*Subject to paragraph 6 bis the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods unless suit is brought within one year of their delivery or of the date when they should have been delivered.*"

37. **(2)** Modern principles as to the construction of commercial contracts must be applied. The whole context of the charter-party must be considered in endeavouring to identify the intention of the parties, even though the immediate object of the inquiry is the meaning of clause 27 (c) (ii).

38. **(3)** This is not a case where the Hague or Hague-Visby Rules were incorporated by general words into the charter (cf ***The Marinor*** supra).

39. **(4)** A clause in identical terms to clause 27 (c) (in a charter-party on the Shelltime 4 form) was considered in ***The Stena Pacifica.***

40. The Stena Pacifica was chartered on the Shelltime 4 form. She was sub-chartered by the time charterers for a voyage from Portugal to Nigeria. Discharge of the cargo in Nigeria was considerably delayed and the time charterers alleged that this was due to defective pumps. The sub-charterers claimed damages against the time charterers for the loss in market value of the cargo between the time it should have been delivered and the time discharge was actually completed. Over a year after completion of discharge, the time charterers commenced arbitration against the owners, claiming damages in respect of the delayed discharge from the owners in the same amount as was claimed against them by the sub-charterers. The owners contended that the claim was time-barred by virtue of clause 27 (c) (ii), which applied the Hague-Visby Rules to any claim *"arising out of any loss of or damage to or in connection with cargo*".

41. Evans J said at page 237: -

"I have come to the conclusion that the correct interpretation of cl. 27(c)(ii) lies somewhere between the parties' competing submissions in this case.

It is agreed that no distinction need be drawn between the Hague and the Hague-Visby Rules for present purposes, and so I will refer simply to ***"the rules"****.*

The phrase ***"loss or damage to or in connection with goods"*** *appears in art. III, r. 8, and art. IV, r. 5(a) and (h). Article III, r. 6, in its original form, was differently worded, referring only to liability "in* ***respect of loss or damage",*** *but even this was held to include financial loss* ***"related to the cargo-owners' goods"****, (****Goulandris Brothers Ltd. v. B. Goldman & Sons Ltd.,*** *[1957] 2 Lloyd's Rep. 207 at p. 222, col. 1; [1958] 1 Q.B. 74, at p. 105, where it was further held that the cargo-owners' liability to pay general average contribution was not closely enough related to the goods to come within the phrase; cf.* ***G.H. Renton & Co. Ltd. v. Palmyra Trading Corporation of Panama,*** *[1956] 2 Lloyd's Rep. 379; [1957] A.C. 149).*

In these circumstances, the starting point, in my judgment, is the fact that the phrase used in cl. 27(c)(ii) has a well-recognized meaning which encompasses most, though not all, of the claims which may be brought by a cargo-owner for breach of the carriers' obligations under the rules. The intention of cl. 27(c)(ii) is that claims of this kind shall be subject to the rules as between the charterer (or any other claimant) and the shipowner, even when governed by the charter-party terms. If the charterer himself is the goods owner, then clearly the rules will apply. It is equally clear that when the charterer alleges a breach of the charter-party and claims damages measured otherwise than by reference to cargo, then the charter-party exceptions set out in cl. 27(a) will apply. The difficulty arises when the charterer alleges a breach of the charter-party, but measures the damages by reference to third party cargo interests. The question is whether in these circumstances the shipowner's liability is governed by the rules, in whichever form, pursuant to the charter-party, they ought to apply.

This is a difficult question and I do not believe that any clear answer is possible. The apparent intention is that the shipowner's liability for what I will call generally ***"cargo claims"*** *shall be governed by the rules. They are to be* ***"subject to"*** *the rules. This means, in my judgment, claims which the goods' owner may bring under the rules and which are of the kind referred to in cl. 27(c)(ii).*

So, in so far as the owner is alleged to have been in breach of his obligations under the rules, in my judgment the charterer's claim is made subject to the rules. But the position is different where the charterer alleges not a breach of the rules, but of some other term of the charter-party itself. Here, for example, an express warranty as to the capacity or performance of the vessel would not necessarily be co-extensive with the owner's obligations under the rules to provide and maintain a seaworthy ship and properly to discharge the cargo. If the charterer alleges that such a term has been broken, his claim is not one that can be made ***"subject to"*** *the rules, except in the narrow sense, that the shipowner might seek to apply the exceptions to his obligations under the rules to his charter-party undertakings. This would be one-sided and it is not, in my judgment, what was intended to be the effect of cl. 27(c)(ii).*

I hold, therefore, that cl. 27(c)(ii) applies, in so far as the plaintiffs may seek to allege breaches of the defendants' obligations which arise under or are co-extensive with his obligations under the rules. But it does not apply where the plaintiffs allege breaches of charter-party obligations which are independent of the rules. The claim, moreover, must be one which, for the purposes of the rules, is for ***"loss of or damage to or in connection with the goods",*** *including a claim for financial loss arising in relation to the goods. The claim for damages measured by reference to the fall in the value of the goods is, in my judgment, of that kind. It follows from this that the damages claim is subject to the rules in so far as it depends upon breaches of the charter-party which correspond with the defendants' obligations under the rules; but in so far as it alleges breaches of any*

independent term of the charter-party, it is not. The plaintiffs are entitled to declaratory relief to this extent but not more."

42. **(5)** Thus Evans J held: -

(i) Clause 27 (c) (ii) encompasses most, though not all, of the claims which may be brought by a cargo-owner for breach of the carriers' obligations under the rules. The intention of clause 27 (c) (ii) is that claims of this kind shall be subject to the rules as between the charterer (or any other claimant) and the ship owner, even when governed by the charter-party terms.

(ii) If the charterer is the goods owner, the rules will apply.

(iii) When the charterer alleges a breach of the charter-party and claims damages measured otherwise than by reference to the cargo, then the charter-party exceptions set out in clause 27 (a) will apply (and clause 27 (c) (ii) will not apply).

(iv) When the charterer alleges a breach of the charter-party, but measures the damages by reference to third party cargo interests, the question arises whether the ship owner's liability is governed by the rules.

In so far as the charterer may seek to allege breaches of the owner's obligations which arise under or are co-extensive with the owner's obligations under the rules, clause 27 (c) (ii) applies. Further for clause 27 (c) (ii) to apply the claim must be one which, for the purposes of the rules, is for *"loss of or damage to or in connection with the goods"*, including a claim for financial loss arising in relation to the goods.

Clause 27 (c) (ii) does not apply where the charterer's alleged breaches of the charter-party obligations are independent of the rules.

43. **(6)** As to the owners' reliance on ***The Marinor,*** I agree with the commentary in Wilford Time Charters 5th edn. Para 34.31 - *"the Hague-Visby Rules were not incorporated by general words in* ***The Stena Pacifica*** *but in the specific terms set out in Clause 27 (c) (ii) of the Shelltime 4 form. … it does not appear that Evans J in* ***The Stena Pacifica*** *sought to lay down any general principle, but construed sub-clause 27 (c) (ii) in the context of clause 27 and the charter as a whole.*"

I do not consider that Colman J in ***the Marinor*** intended to cast doubt on the construction of clause 27 (c) (ii) in ***The Stena Pacifica.***

44. **(7)** The decision in ***The Stena Pacifica*** has stood for 15 years as the only authority specifically on the effect of clause 27(c)(ii) of the Shelltime 4 form. In ***Dunlop and Sons v Balfour W. Williamson*** [1892] 1 QB 507 Lord Esher said: - *"It is a wholesome rule that has often been laid down that when a well known document has been in constant use for a number of years, the Court, in construing it, should not break away from previous decisions, even if in the first instance they would have taken a different view, because all documents made after the meaning of one has been judicially determined are taken to have been made on the faith of the rule so laid down.*"

For these reasons, even if I had taken a different view as to the true construction of clause 27 (c) (ii), I doubt whether it would have been appropriate for me to do other than follow and apply the decision of Evans J.

45. There is a need for commercial certainty among those who use the Shelltime 4 form as to whether, in circumstances such as those in the present case, a 1 year or 6 year limitation period applies.

46. **(8)** In the event I agree with Evans J that clause 27 (c) (ii) is concerned with what would be regarded in the marine market as *"cargo claims"*. I accept the charterers' submission that it refers only to claims sufficiently connected with cargo, that is to say claims (whether original or derivative) of the sort which are normally brought by cargo-interests (bill of lading holders), claiming loss or damage arising in relation to the cargo and measured by reference to the cargo. Included in this category are claims for physical loss of cargo and claims for physical damage to cargo. Also included are claims for financial loss such as (by way of example) a fall in the value of a particular cargo or the costs of storing/transshipping a particular cargo.

47. In the present case no claim is made for (a) loss of cargo, (b) damage to cargo, (c) loss in connection with cargo (in the sense contemplated by clause 27 (c) (ii)) or (d) damage in connection with cargo (in that sense). The claim is not a cargo claim in the sense understood in the marine market. The charterers claim damages for loss of use of the vessel (see paragraph 28 (2) of the Points of Claim).

48. As to section 12 of the Arbitration Act 1996 in ***The Seki Rolette*** Mance J said at para 649: -

"On the approach adopted by Judge Jack, a mistake of law as to what suffices to refer a matter to arbitration within the meaning of a clause requiring such a reference to be made within a specific time may fall within s. 12(3)(a), while a mistake of law as to what requires to be referred to arbitration within such a time will not. The distinction is narrow, and I should like to reserve my judgment on the possibility of applying s. 12(3)(a), both in a case of reasonable misapprehension about the scope of the circumstances falling within an arbitration agreement, and in a case of reasonable misapprehension about the need to commence arbitration within a particular time. The construction of a contract is a matter on which even Courts can hold very different views, sometimes only resolved at the highest level. To take an example from legal history, if one supposes that, prior to the House of Lord's decision in ***The Saxon Star,*** *the generally accepted view in commercial circles was shown to have been that accepted by the Court of Appeal in that case, viz. that the Hague Rules were inapplicable to regulate the relations of owner and charterer under a clause like cl. 43, or to have been (in common with Mr. Justice Devlin and two members of the House of Lords) that the application of the Hague Rules must be confined to cargo-carrying voyages, it seems to me at least arguable that a*

party acting on that view might be able to show that the interpretation subsequently adopted was outside his reasonable contemplation within the meaning of the section."

49. It seems to me that if the market has acted for 15 years on a decision of the Commercial Court as to the true construction of a clause in a standard form charter-party (which has important time bar implications), and if a different construction were arrived at (for example on appeal) 15 years after the original decision, there would be significant arguments available in support of the contention that section 12 (3) (a) might be engaged. It is however unnecessary to consider section 12 further in view of my conclusions as set out above.

50. For the reasons set out above I do not consider that the charterers' claims (taken at face value) are time-barred.

Mr Michael Coburn (instructed by Bentleys Stokes & Lowless) for the Claimant
Mr Nathan Tamblyn (instructed by More Fisher Brown) for the Respondent