CA on appeal from Commercial Court (HHJ Nicholas Chambers QC) before Thorpe LJ; Mance LJ; Mr Justice Evans-Lombe, 23rd January 2004.

Lord Justice Mance:

1. By a sale contract, on terms contained in or evidenced by telexes dated 24th and 25th April and 17th May 2001, the appellant, Kronos Worldwide Limited ("Kronos") agreed to sell and the respondent, Sempra Oil Trading SARL ("Sempra") agreed to buy either one or two cargoes of gasoil per month "FOB one safe port/berth Constantza by buyer's m/t 'TBN' over the period 1st June/31st December 2001". The price was to be secured by a letter of credit.

2. In these proceedings Sempra seeks to establish an entitlement to demurrage in respect of the vessel at Constantza. The appeal relates to a preliminary issue, which was (according to the court's order dated 4th March 2003) directed at a hearing on 18th December 2002. The direction was that "*the Court would finally determine, as a preliminary issue, the following question of law*", namely:

   "Whether (subject to waiver) laytime did not run under this contract until after a letter of credit had been opened".

   HHJ Nicholas Chambers QC determined this issue against Kronos, holding that laytime could run prior to the opening of a letter of credit by Sempra.

3. As to delivery, the sale contract provided for the sellers *"to declare cargo availability, namely one cargo or two cargoes each month ….",* together with a fifteen day loading range for each cargo, by the fifteenth day of the month preceding each month of delivery. The fifteen day loading range so declared was *"to be mutually narrowed to three days loading range (always minimum five days between liftings)".*

4. The contract further provided:

   "<u>PAYMENT</u>

   …..

   PAYMENT TO BE SECURED BY AN IRREVOCABLE LETTER OF CREDIT TO BE OPENED PROMPTLY THROUGH A FIRST CLASS BANK…….

   <u>LAYTIME</u>

   AS PER CHARTER PARTY AND TO BE DIVIDED BY TWO PLUS 6 HOURS NOR SHINC, BOTH PRORATA FOR PART CARGO, UNLESS SOONER BERTHED, BOTH SHINC, OTHERWISE CALCULATED AS PER CHARTER PARTY TERMS, CONDITIONS AND EXCEPTIONS.

   <u>DEMURRAGE</u>

   IF ANY, WILL BE CALCULATED IN ACCORDANCE WITH THE CHARTER PARTY RATE, TERMS CONDITIONS AND EXCEPTIONS (EXCEPT AS INDICATED UNDER ABOVE CLAUSE). VALID CLAIM(S) SHALL BE PAYABLE AS AGAINST BUYER'S CLAIM. DULY SUPPORTED BY THE NOR STATEMENT, CHARTER-PARTY, TIMESHEET OR STATEMENT OF FACTS, DEMURRAGE CALCULATION AND INVOICE, PROVIDED SAME IS RECEIVED WITHIN 90 DAYS FROM B/L DATE, OTHERWISE CLAIM WILL BE NULL AND VOID….."

   It is not in issue that the charterparty terms, as incorporated into the sale contract, provided for notice of readiness to be served after the vessel had arrived in Constantza at the customary anchorage, berth or no berth, and for laytime to run from 6 hours after such service or from when the vessel was ready to load, whichever first occurred.

5. Sempra's demurrage claim relates to a second cargo which Kronos on 8th May declared that it would supply in June 2001. The loading range was 20-30 June, narrowed on 29th May to 25-30 June - no point arises on the fact that these were ten and five (rather than fifteen and three) day ranges. On 15th June Kronos asked to postpone the shipment to 1-5 July, because of slippage in the refinery schedule. In response on 18th June Sempra nominated *Spear I* (a vessel in fact chartered by Sempra's sub-buyer, Trafigura Beheer BV, by a fixture dated 22nd May 2001). Sempra did not agree Kronos's request for postponement, but stated that it intended to narrow the vessel's arrival to 28-30 June. Kronos maintained its request and Sempra repeated its stance on the same day.

6. The *Spear I* arrived at Constantza early on 28th June 2001. Loading commenced on Monday, 9th July and was completed on 11th July 2001. Sempra claims that the vessel, after her arrival in Constantza, anchored at the customary anchorage and tendered notice of readiness at 0934 hours, that laytime commenced 6 hours thereafter at 1534 hours on 28th and that it expired 48 hours thereafter at 1534 hours on 30th June 2001, after which the vessel was on demurrage for 11 days 1 hour 16 minutes, earning US$160,265.26. The time at which the notice of readiness was tendered, and so its validity, is in dispute, but this dispute lies outside the scope of the preliminary issue. It is common ground that no letter of credit was issued until 5th or possibly 6th July 2001, when Kronos called for one and it was opened immediately. Whether Kronos waived the provision of any letter of credit before that date is in issue, though again outside the scope of the preliminary issue. The appeal has been argued on the basis that a separate letter of credit was to be or could be issued in respect of each shipment. Kronos claims that laytime did not commence until a reasonable time after provision of a letter of credit, and on this basis not before 9th July 2001, after which the vessel loaded within the permitted laytime, so that no demurrage is due.

7. We are to assume for the purposes of the preliminary issue (a) that the notice of readiness given on 28th June 2001 was valid, (b) that there was no waiver of Sempra's sale contract duty to provide a letter of credit

"promptly" (cf ***Plasticmoda Societa P.A. v. Davidsons (Manchester) Ltd.*** [1952] 1 Ll.R. 527 for an example of such a waiver) (c) that, in the absence of any such waiver, that duty required Sempra to open a letter of credit at a date (presently unnecessary to seek further to define) in advance of the vessel's arrival at Constantza on 28th June 2001 and (d) that, due to slippage in the refinery programme, Kronos did not have any cargo to load until, at least, 5th or 6th July 2001 when it called for the letter of credit. Mr Baker for Sempra asserts, on the basis of the evidence filed below, that the fourth assumption is also clear as a matter of fact, but it is unnecessary to consider whether that is so; the preliminary issue ordered was expressly described as one of law, and the judge's reasons for granting permission to appeal confirm that he decided it "*on assumed facts*". On those four assumptions, therefore, Sempra was in breach of the sale contract in failing to open a letter of credit promptly (no doubt, well in advance of the vessel's arrival at Constantza, although the judge did not specify by when he considered that a letter of credit should have been opened). Kronos's case is that the opening of a letter of credit was a condition precedent to any duty on its part to load cargo, and that laytime cannot therefore have begun to run until (a reasonable time) after the letter of credit was put up. It is common ground that the preliminary issue does not require us to consider whether the bracketed reference to "*a reasonable time*" would be correct, if Kronos is otherwise right, still less whether the delay from 5/6th to 9th July 2001 would in that event constitute or exceed a reasonable time.

8. The judge accepted that the opening of a letter of credit was a condition precedent to the obligation of a seller to load cargo. He cited ***Trans Trust SPRL v. Danubian Trading Co. Ld.*** [1952] 2 QB 297, 305 per Denning LJ. He might also have cited the analysis of this and other FOB cases in ***Ian Stack Ltd. v. Baker Bosley Ltd.*** [1958] 2 QB 130, where Diplock J concluded that (in the absence of other express agreement) such a credit must be opened either within a reasonable time prior to or at latest by the earliest shipping date (meaning the earliest date of the contractually agreed shipping period, as opposed to whatever might prove to be the actual shipping date). Sempra does not *challenge the judge's proposition, although it seeks to confine "the obligation of a seller to load cargo" in this context to "the f.o.b. seller's obligation to part with possession of the goods i.e. (in the usual case) actually to put the goods onto the ship once she is at berth for loading"*. The judge also accepted that "*once the letter of credit had been opened, …. Kronos would be entitled to a reasonable period within which to load the cargo*". But, he considered:

"… that does not mean that laytime under the laytime and demurrage provisions of the contract would begin to run when Kronos first became obliged to load. The fact that laytime may have started to run before the provision of the letter of credit is nothing to the point. There is no reason in principle why the occurrence of a condition precedent should not result in an obligation to be responsible for an expense incurred before the condition occurred. For instance, expenses may have been incurred in connection with an anticipated contract which the other party to the eventual contract undertakes to reimburse in the event that a condition is met at a later time."

9. The judge also thought that to equate Kronos's duty to load with the commencement of laytime would involve

"an impermissible elision of Sempra's obligation for demurrage under the charterparty at which the demurrage provision in the contract is aimed with the separate contractual obligation between Sempra and Kronos arising from Sempra's failure promptly to open the letter of credit".

Leaving aside the fact that the charterparty was made by Sempra's sub-buyer, not Sempra, Kronos points out that elsewhere the judge expressly accepted that the sale contract provisions regarding laytime and demurrage "*did not operate as an indemnity*".

10. The judge concluded by stating that the demurrage claim could have been defeated, at least by way of set off, if Sempra's breach of its obligation to open a letter of credit promptly had resulted in damage to Kronos. That would in his view have been the case, had Kronos had cargo to load, which it had desisted from loading because of the absence of the letter of credit. In the present case, however, Kronos could not have performed its part of the contract, even if there had been a letter of credit, since it did not have the cargo. So, in the judge's view, Sempra's breach had caused Kronos no loss which it could set off against its liability for demurrage.

11. The judge's reasoning straddles propositions travelling in various different directions. According to one, the laytime provision is in law separate from the contractual position involving the letter of credit. According to a second (described in the preceding paragraph of this judgment), the failure to provide a letter of credit may still entitle the seller to refuse to load, on a supposed principle of factual causation. According to a third, the provision of a letter of credit was a condition precedent to the running of laytime, but could be satisfied retrospectively. Mr Baker recognised, realistically, that the third proposition was "*perhaps questionable*", but submitted (correctly) that the first proposition did not necessarily depend upon the others.

12. The third proposition is untenable. If the provision of a letter of credit is a condition precedent to the running of laytime, the consequence must be that no laytime runs and no demurrage can accrue before such a letter of credit is provided. The idea that the *late* provision of a letter of credit could *retrospectively* trigger the running of laytime and the accrual of demurrage, during a period when (viewing the matter contemporaneously) no laytime was running or demurrage accruing, is obviously unacceptable. A condition precedent enables a party to know where it stands contemporaneously. Until a letter of credit has been provided, for all the seller knows none may ever be. The seller (assuming that it does not treat the contract as repudiated) must be entitled to do nothing in the meanwhile. The judge may have recognised it as particularly odd, if laytime were to run and demurrage potentially to accrue under a contract in relation to which no letter of credit was ever produced. He may have

introduced the novel idea of a condition precedent having "*retrospective"* effect in his paragraph 19 in an attempt to remove this particular oddity. But the whole exercise was fundamentally flawed.

13. The provisions of the present sale contract do in fact include an express condition in relation to legal liability to pay for demurrage otherwise accrued due in the past in the ordinary way. Valid demurrage claims are to be payable as against the buyer's claim duly supported by various documentation "*provided same is received within 90 days from B/L date, otherwise claim will be null and void ….*". Whether this is a condition precedent or subsequent need not be discussed. It is a condition attaching to legal liability, not a condition having retrospective effect in relation to the running of laytime or accrual of demurrage, which depend in principle on the contemporaneous position.

14. I move to the judge's primary proposition, which is that the laytime and demurrage provisions can be separated from the contractual provision requiring presentation of a letter of credit. The meanings of laytime and demurrage were identified by Lord Diplock in ***Dias Co. Nav. S.A. v. Louis Dreyfus Corpn***. [1978] 1 WLR 261, 263:

*""What **"laytime"** and **"demurrage"** mean was stated succinctly by Lord Guest (with the substitution of **"lay days"** for "laytime") in **Union of India v Compania Naviera Aeolus S.A.** [1964] A.C. 868, 899:*

> *"Lay days are the days which parties have stipulated for the loading or discharge of the cargo, and if they are exceeded the charterers are in breach; demurrage is the agreed damages to be paid for delay if the ship is delayed in loading or discharging beyond the agreed period."*

For the purposes of the adventure in four stages contemplated by a voyage charterparty, laytime is that period of time, paid for by the charterer in the freight, for which the shipowner agrees to place the ship at the disposition of the charterer for carrying out the loading operation or the discharging operation. Laytime for discharging is generally based upon an estimate of the time which will be needed to carry out the operation with reasonable diligence if everything else goes well.

*The formula states at what point of time laytime will start and what period of time thereafter shall be excluded from the calculation and so prevent its running continuously. These excluded periods are sometimes expressed as exceptions, e.g. **"Sundays and holidays excepted,"** sometimes by some such phrase as that time used for a stated purpose is "not to count as laytime [or discharging time]" or simply "not to count."*

If laytime ends before the charterer has completed the discharging operation he breaks his contract. The breach is a continuing one; it goes on until discharge is completed and the ship is once more available to the shipowner to use for other voyages. …."

15. The four stages contemplated in a voyage charter are the approach voyage to the place of loading, the loading operation at that place, the carrying voyage to the place of delivery and the discharging operation at that place: see ***E. L. Oldendorff & Co. GmbH v. Tradax Export SA (The Joanna Oldendorff)*** [1973] 2 Ll.R. 285, per Lord Diplock at pp. 304-6. Lord Diplock pointed out that it was only the second and fourth stages that involved the charterer in obligations to perform; and that the boundary between the first two stages would vary according to whether the charter was a berth or port charter. In the present case, the second stage began after the vessel arrived at the Constantza anchorage and gave notice of readiness.

16. Under a voyage charter, or by parity of reasoning a sale contract, laytime is therefore the period of time, for which one party agrees to place a vessel at the disposal of another for carrying out the loading (or discharging) operation. Here, it was to consist in a period for loading, after service of notice of readiness, of 48 hours, plus 6 hours (a time which could be expected to cover berthing) unless the vessel was sooner berthed. It was the seller's duty to arrange all aspects of the loading operation within that overall period of (maximum) 54 hours. These included berthing, connection of hoses and the actual shipment of goods on board.

17. Sempra does not, before us, dispute that the provision of a letter of credit was and continued to be an implied condition precedent to any duty on Kronos's part to load cargo, even though Kronos did not (as it could have done) treat the failure to provide such a credit timeously as repudiatory, that is as a reason for regarding all further primary obligations under the sale contract as at an end. There was some discussion before us as to the precise legal basis on which any relationship between Kronos and Sempra continued in these circumstances in late June and early July 2001. On the assumption we are making a letter of credit should have been supplied before 28th June 2001. The sale contract provided for shipment in the latter part of June, or (after the narrowing of dates) between 25th and 30th and ultimately, it seems, 28th and 30th June 2001. No letter of credit was provided even by the end of June. Despite the absence of a letter of credit, Kronos at all times apparently knew that the vessel was on its way, or after 28th June at anchorage ready for loading. Sempra submitted that the sale contract can only have continued after the end of June on the basis of some novation or variation. The alternative analysis advanced by Kronos is that it was entitled to treat the failure to open a timely delivery of a credit and the failure to take timely shipment of the cargo as not repudiatory, even after the end of June; and that the contract simply continued, with shipment by the end of June being no longer of the essence. Since it is common ground, on either basis, that the provision of a letter of credit continued to be a condition precedent to any duty to load, it makes no difference for present purposes which analysis is adopted.

18. The issue is therefore whether it is possible, as Sempra submits and the judge accepted, to separate the laytime provisions from the contractual requirement for a letter of credit, which is in turn a condition precedent to Kronos's duty to load. Sempra submits that the law's rationale, in treating the provision of a letter of credit as a condition precedent, was to protect the buyer from having to part with possession of the goods without receiving payment of their price (even if it was parting with possession not to the buyer, but only to the shipowner under bills of

lading preserving the seller's title and interest). Sempra seeks to limit any condition precedent to that precise context, and to support the limitation by pointing out that any exceptions to laytime should be clearly expressed. References to parting with goods can be found in the context of the relevant condition precedent in ***A. E. Lindsay & Co. Ltd. v. Cook*** [1953] 1 Ll.R. 328, 335 and ***W. J. Alan & Co. Ltd. v. El Nasr Export and Import Co.*** [1972] 2 QB 189, 207. But these cases did not raise the present issue, or draw any distinction between a seller parting with possession and undertaking any other activity associated with loading. I add that, although *Ian Stach Ltd. v. Baker Bosley Ltd.* did not raise the present issue either, Diplock J described the condition precedent in more general terms at p.143:

"It seems to me that, particularly in a trade of this kind, where, as is known to all parties participating, there may well be a string of contracts all of which are financed by, and can only be financed by, the credit opened by the ultimate user which goes down the string getting less and less until it comes to the ultimate supplier, the business sense of the arrangement requires that by the time the shipping period starts each of the sellers should receive the assurance from the banker that if he performs his part of the contract he will receive payment. That seems to me at least to have the advantage of providing a definite date by which the parties know they have to fulfil the obligation of opening a credit."

19. I have no doubt that the provision of a letter of credit should be regarded as a condition precedent to any obligation on the part of the seller to perform any aspect of the loading operation which is the sellers' responsibility. So, if the contract had been one under which notice of readiness could only be given in berth and the vessel had berthed, the seller could not have been obliged, for example, to connect the hoses, before refusing to pump gasoil through them. Here notice of readiness could be given and laytime could begin to run after arrival in port, but it would make no commercial sense to treat the seller as obliged to berth the vessel, in circumstances where there could be no duty to load cargo once the vessel was in berth. Berthing a vessel costs money, because of towage and/or berthing fees. If a vessel is berthed but not loaded because of the absence of a letter of credit, problems on the seller's part and disputes with the berth-owner (if different from the seller) will also be likely.

20. There should in my view be a clear rule governing such situations (as contemplated by the last sentence quoted above from Diplock J's judgment in *Ian Stach Ltd. v. Baker Bosley Ltd.*). The clear rule is in my judgment that laytime is the time allowed for the loading operation, while the provision of a letter of credit is a condition precedent to the seller's duty to perform any part of the loading operation. The two, in other words, bear on the same subject-matter. To try to distinguish the physical parting with possession of the cargo from other aspects of the loading operation such as berthing, as Sempra does, is artificial and wrong in principle. Until the appropriate letter of credit is to hand, a seller is not obliged to perform any part of the loading operation.

21. There is no incongruity in recognising that laytime under the sale contract between Kronos and Sempra may begin at a different time to laytime under Sempra's sub-sale, or to laytime under the charterparty entered into by Sempra's sub-buyer, Trafigura. That is always possible, for example if the different contracts had different laycan dates. Laytime could begin under one, before it began under another. If the laycan periods under the sale and sub-sale were the same, and Sempra's failure to put up a letter of credit was matched (and perhaps explained) by an equivalent failure on the part of its sub-buyer, then the commencement of laytime would be equally postponed under both contracts. If, by failing to put up this credit, Sempra postponed the running of laytime and prevented demurrage accruing as against Kronos, in circumstances where its own sub-buyer was guilty of no such default and so could treat laytime as running and recover demurrage from Sempra, that is Sempra's own responsibility for *not* operating its contractual relations on a proper back-to- back basis.

22. The fact that the running of laytime under a sale contract depends on the provision of a letter of credit, whereas the running of laytime under the charterparty does not, derives from the differences between the nature and terms of the two types of contract, having regard in particular to the protection for the seller intended to be provided by the letter of credit. The judge's view was that the laytime provisions under all these contracts should be made to operate as far as possible back-to-back, even though the sale contract provisions relating to laytime and demurrage were not couched as an indemnity against liability under the sub-sale or charterparty. But, in taking this view, he overlooked the fundamental difference introduced by the requirement that the buyer provide a letter of credit which, as a matter of law, operates as a condition precedent to the seller's duty to load.

23. The judge thought that it was possible to fashion a result whereby laytime would run and demurrage accrue, although no letter of credit had been provided, but the seller would have a potential set off if it could show that it had cargo available to load which it had desisted from loading because of the absence of a letter of credit (paragraph 20). The failure to provide a letter of credit would (in other words) constitute a breach giving a right to damages, which (the judge thought) could include loss in the form of demurrage which the seller incurred through deciding (for its protection) not to load cargo which it would otherwise have loaded. Another analysis suggested by Sempra is that the buyer's fault in failing to put up a letter of credit (leading the seller to refrain from loading) could be regarded as preventing or interrupting the running of laytime. The main objection to both these analyses is that they fail to give proper effect to the admitted principle that the provision of a letter of credit is a condition precedent to the seller's duty to load. A further objection is that, if as a matter of law the buyer's duty to load were independent of the seller's duty to provide a letter of credit, it would involve a novel and in my view unsustainable conception of factual causation to suggest that breach of the latter could "cause" or justify breach of the former duty. It is unclear whether the judge was accepting Sempra's suggested distinction

between physically parting with possession and other aspects of the loading operation. If he was, he was in my view wrong to do so, for the reasons given in paragraphs 19 and 20 above.

24. Mr Baker for Sempra sought also to rely on cases such as ***Soc. Financiera de Bienes Raices S.A. v. Agrimpex Hungarian Trading Company (The Aello)*** [1961] AC 135 as providing a relevant analogy. He submits that the actual reason why Kronos could not or did not berth the vessel on her arrival at anchorage was that there was no cargo to load if she berthed. Sempra's former operations manager, Frau Michela Spitz, has stated her belief to that effect. For the purposes of determining the preliminary issue, I therefore make the further assumption that she is correct.

25. ***The Aello*** establishes that, where a vessel cannot become an arrived ship (e.g. by entering a port or berth, depending on whether the charter is a port or berth charter) and therefore start laytime running, unless her charterer already has at least part of the cargo ready and available to load her when she does become an arrived ship, then it is the charterer's (absolute) duty to have such cargo ready and available in order to enable her to proceed and become an arrived ship and to start laytime. Breach of such a duty does not start laytime running or give a right to demurrage, but entitles the owner to damages (which may be calculated by reference to the demurrage rate). The present situation is, however, completely different to that in ***The Aello.*** Here the vessel was an arrived ship and able to serve notice of readiness after arrival and anchorage at Constantza and there was nothing to stop laytime running, except the absence of a letter of credit. It is not possible to gain from the well-recognised principle explained in ***The Aello*** any support for the proposition that Kronos as seller had any obligation to berth the vessel, or to have cargo available in order to enable her to berth, separate from its general loading obligation. Before performing that general loading obligation, Kronos was entitled to a letter of credit. Once such a credit was provided, Kronos had the laytime within which to perform its obligation.

26. ***The Aello*** might have had potential relevance if (under the charterparty clauses incorporated into the present sale contract) the vessel could only have become an arrived ship and have given notice of readiness on reaching the berth. Making the assumption referred to in paragraph 24 above, it could then have been argued that Kronos was in breach of duty in not having cargo to enable the vessel, after reaching Constantza, to proceed to berth. But a number of points would have arisen. First, the breach would not have meant that laytime started running after the vessel reached Constantza. It would at most have entitled Sempra to damages. Strictly, therefore, the breach would have been irrelevant to the answer to the preliminary issue. Secondly, and more importantly, the question would have arisen whether the provision by Sempra of the letter of credit also constituted a condition precedent to Kronos's duty under *The Aello* to ensure (by having sufficient cargo on hand) that the vessel could berth after arrival at Constantza. Without expressing any definite view on the point, there might be much to be said for regarding the provision of a letter of credit as a condition precedent also to the performance of any duty arising under the principle in *The Aello*. It might be thought to make little sense to treat a seller as obliged to have cargo available to load a vessel (even if cargo would be necessary to enable the vessel to berth), in circumstances when no duty to load cargo at the berth could arise if the vessel got there, because no letter of credit had yet been provided. No letter of credit might ever be provided and costs might be expended and the berth occupied to no purpose. Thirdly, and in any event, even if there had been an actionable breach by Kronos in failing to do the necessary to enable the vessel to berth, Kronos would still not have been obliged to load the vessel once at berth in the absence of a letter of credit. In measuring any damages recoverable for any breach by Kronos consisting in failure to ensure that the vessel could become an arrived vessel by berthing, it must be assumed that Kronos would have exercised its contractual rights in the manner most favourable to it, i.e. here by refraining from loading at the berth unless and until a letter of credit was provided. Always leaving aside the possibility of waiver, it would be difficult to see any basis on which Sempra could (even factually) attribute its own failure to provide the letter of credit to any failure by Kronos to enable the vessel to berth – particularly when Sempra's breach (failure to provide a letter of credit "promptly") commenced well prior to any such breach by Kronos. Even if the scenario discussed in this paragraph had been relevant, it therefore seems to me improbable that it could have led to recovery of damages equating with the demurrage claimed by Sempra.

27. For the reasons given in paragraphs 1 to 25, the judge's conclusions cannot be sustained and this appeal must be allowed. The preliminary issue should be answered in Kronos's favour, to the effect that (subject to any waiver) laytime did not begin to run under this sale contract until after the letter of credit had been opened.

Mr Justice Evans-Lombe:

28. I agree.

Lord Justice Thorpe:

29. I also agree.

Order: Appeal allowed; Respondent's application for permission to appeal to the House of Lords refused; no order for costs. (Order does not form part of the approved judgment)

Mr Edmund King (instructed by Ince & Co.) for the Appellant
Mr Andrew Baker (instructed by Waterson Hicks) for the Respondent