[JOSEPHIDES, J.]

GEORGE D. COUNNAS & SONS LTD.,

Plaintiffs.

v.

1. ZIM ISRAEL NAVIGATION CO., LTD.,
2. SHOHAM (CYPRUS) LTD.,

Defendants.

(*Admiralty Action No.* 7/65).

Admiralty - Shipping - Carriage of goods by sea - Limitation of actions - Claim for damages for breach of contract to carry goods - Whether claim statute-barred - Applicability of Article III, rule 6 of the Rules relating to Bills of Lading (the "Hague Rules") in the Schedule to the Carriage of Goods by Sea Law, Cap. 263 - Limitation period of six years prescribed under section 5 of the Limitation of Actions Law, Cap. 15 applicable - Claim not within the ambit of Article III, rule 6 (supra)

Contract - Prescription - Claim for breach of agreement to carry goods - See under "Admiralty".

Shipping - Carriage of goods by sea - Limitation of actions - See under "Admiralty".

Limitation of actions - Claim for damages for breach of contract of carriage of goods - See under "Admiralty".

Prescription - Carriage by sea - Claim for breach of contract - See under "Admiralty".

Hague Rules - Shipping - Carriage by sea - See under "Admiralty".

Carriage by sea - See above.

On the 16th November, 1961, the defendants contracted with the plaintiffs for the shipment of plaintiffs 10,000/11,000 large cases of citrus fruit from Famagusta to Trieste at the agreed rate of £0.2.9d per case, on m/v "Santa Maria", lay days 1st-4th December, 1961. The defendants failed to provide the "Santa Maria" or substitute on the aforesaid days. In view of this failure the plaintiffs shipped their

citrus cargo on another vessel on or about the 5th/6th December, 1961, at a higher rate of freight. By their admiralty action filed on June 7, 1965, the plaintiffs claim against the defendants £677.500 mils, being the alleged difference in freight paid by them for the shipment and transport of their said citrus cargo. The parties after filing an agreed statement of facts* invited the Court to decide as a preliminary point of law the question "whether the plaintiffs' claim is time-barred and/or statute-barred".

Counsel for the defendants submitted that the claim was statute barred and relied on the provisions of the third paragraph in rule 6** of Article III in the Schedule to the Carriage of Goods by Sea Law, Cap. 263. Counsel for the defendant further submitted that the one year period provided in the aforesaid rule 6 commenced to run as from "the date when the goods should have been delivered", i.e. the 31st December, 1961, and that consequently, the present action, which was filed in June, 1965, was statute barred. He conceded, however, that if the provisions of rule 6 did not apply then the limitation period under the provisions of s. 5 of the Limitation of Actions Law, Cap. 15, was six years and in that case the present action would not be statute barred.

Held, (1) it seems to me that the object of the provisions of rule 6 is clear: it is to give an early opportunity to the carrier to take note and inspect or survey an alleged loss or damage to the goods while there is time and before material evidence is destroyed. That is why the limitation period of one year is laid down for bringing suit, so that the carrier may not be at a disadvantage in defending a claim of loss or damage to goods. On the other hand, if the claim is for damages for breach of contract to provide a ship or shipping space the same considerations do not apply, and it may well be that it was intended that the ordinary limitation period of six years for claims of breach of contract should be applicable in such cases.

(2) The Hague Rules apply only where there is a "contract of carriage", that is, a contract "covered by a bill of lading or any similar document of title" (Article I (b)). This definition includes any contract of affreightment, however

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* Editor's note: Agreed statement of facts appears at pages 184–185 *post*.

** Articles I, II, III and VII are set out in the judgment at pages 186–187 *post*.

informally made in its inception, the parties to which intend that, *in accordance with the custom of that trade*, the shipper shall be entitled to demand at or after shipment a bill of lading setting forth the terms of the contract. To such a contract the rules will apply even though no bill of lading was in fact demanded or issued : *Pyrene Co.* v. *Scindia Navigation Co.* [1954] 2 All E.R. 158, at page 164.

(3) Article II is the crucial Article applying the rights and liabilities in the subsequent Articles to the operations it enumerates, that is to say, the Hague Rules are applied to every "contract of carriage" of goods by sea in relation to the "loading, handling, stowage, custody, care and discharge of such goods".

(4) Under Article I (e) and VII, the Rules only apply from loading to discharge and the parties may make what terms they please as to the period "prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by sea". Although in the case of *Goulandris Brothers* v. *Goldman* [1958] 1 Q.B. 74, goods were *loaded* on the ship and were actually delivered, yet it was held that the cargo owners' cross-claim for damages for breach of the contract of carriage (by reason of the unseaworthiness of the vessel and the ship-owners lack of diligence to make her seaworthy) of an amount equal to the cargo owners' general average contribution (claimed from them by the ship-owners) was *not* within Article III, rule 6, since, *inter alia*, the liability to general average contribution in this case was too remote from the cargo owners goods ; therefore, the cross-claim was not barred by lapse of time.

(5) It will be observed that although there was loading of the goods which were actually carried on the voyage, yet it was held that the connection between the damage in that case (i.e. the cargo owners' liability to pay general average contribution) and the cargo owners' goods was too remote.

(6) Consequently, in construing rule 6 of Article III, in the absence of any authority to the contrary, I am inclined to the view that the provisions of the third paragraph do not begin to apply until the stage of the loading of the goods on the ship agreed upon by the parties is reached and not before. It, therefore, follows that where goods were never loaded on the ship agreed upon which never came to port, as in the present case, the plaintiffs' claim for damages for breach of the contract to carry the goods is not within the ambit of Article III, rule 6.

(7) For these reasons I hold that the plaintiffs' claim is not barred by lapse of time as the limitation period applicable to such actions is six years and not one year (see section 5 of the Limitation of Actions Law, Cap. 15). The defendants to pay the plaintiffs the costs of the hearing of this question.

Order in terms. Order for costs as aforesaid.

Cases referred to :

Compania Colombiana de Seguros v. *Pacific Steam Navigation Co.* [1964] 1 All E.R. 216 ;

Pyrene Co. v. *Scindia Navigation Co.* [1954] 2 All E.R. 158 at p. 164 ;

Goulandris Brothers v. *Goldman* [1958] 1 Q.B. 74.

Ruling.

Ruling as a preliminary point of law of the question whether the plaintiffs' claim in an admiralty action for damages for breach of contract is time barred and/or statute barred.

Y. Chrysostomis, for the plaintiffs.

A. Michaelides, for the defendants.

Cur. adv. vult.

JOSEPHIDES, J. : In this case the parties, after filing an agreed statement of facts, invited the Court to decide as a preliminary point of law the question " whether the plaintiffs' claim is time barred and/or statute barred ".

The agreed facts were that—

(a) on the 16th November, 1961, the defendants contracted with the plaintiffs for the shipment of plaintiffs' 10,000/11,000 large cases of citrus fruit from Famagusta to Trieste directly, lay days 1st–4th December 1961, at the rate of £0.2.9d. per case, on m/v " Santa Maria " ex " Lilika ", or substitute to be provided by the defendants ;

(b) that defendants failed to provide the " Santa Maria " and/or substitute on the aforesaid days on the grounds of defendants' answer to the petition (which grounds are denied by the plaintiffs) and, in

view of this, the plaintiffs shipped their citrus cargo on another vessel, namely, m/v "Marigoulla" on or about 5th/6th December, 1961, at a higher rate of freight ;

(c) that the plaintiffs filed the present action on the 7th June, 1965, claiming the sum of £677.500 mils being the alleged difference in freight paid by the plaintiffs for the shipment and transport of the aforesaid citrus cargo on m/v "Marigoulla" (the amount of which is denied by the defendants) ;

(d) that the plaintiffs filed on the 26th June, 1962 with the District Court of Famagusta Action No. 1233/62 against the same defendants as in this action claiming the same amount, and that that action (No. 1233/62) when it came on for hearing on the 29th March, 1963 was withdrawn by plaintiffs' counsel, for want of jurisdiction of the District Court of Famagusta to deal with the case, with reservation of the plaintiffs' rights to take proceedings in the proper Court ;

(e) that the plaintiffs filed in or about May, 1963 with the Supreme Court of Cyprus (Admiralty Jurisdiction) Action No. 8/63 against the same defendants as in the present action, claiming the same amount ; and that a conditional appearance was entered by the first defendants, the Zim Israel Navigation Co. Ltd. of Israel, and that the said action was withdrawn by plaintiffs' counsel by a notice of discontinuance dated the 26th May, 1965, on the ground that service of the writ of summons was not made on the first defendants within the prescribed period of one year from the date of the filing of the action; and

(f) that the said citrus cargo should have been delivered at Trieste by the 31st December, 1961.

Mr. Michaelides, counsel for the defendants, submitted that the plaintiffs' claim was statute barred, relying on the provisions of the third paragraph in rule 6 of Article III in the Schedule to our Carriage of Goods by Sea Law, Cap. 263. That Law reproduces the provisions of the English Carriage of Goods by Sea Act, 1924, which gives effect to the recommendations of the International Conference on Maritime Law held at Brussels in 1923 which adopted the Rules

(known as the "Hague Rules") which are embodied in the Schedule to the English Act and our Cap. 263. The Rules are made applicable, except in so far as the Law provides otherwise, to certain contracts for the carriage of goods by sea. The Rules material for the determination of the present case are the following :

"RULES RELATING TO BILLS OF LADING".

ARTICLE I

"In these rules the following expressions have the meaning hereby assigned to them respectively, that is to say:

(a) 'carrier' includes the owner or the charterer who enters into a contract of carriage with a shipper ;

(b) 'contract of carriage' applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same ;

(c).....

(d) 'ship' means any vessel used for the carriage of goods by sea ;

(e) 'carriage of goods' covers the period from the time when the goods are loaded on to the time when they are discharged from the ship".

ARTICLE II

"Subject to the provisions of Article VI, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, custody, care, and discharge of such goods, shall be subject to the responsibilities, and liabilities and entitled to the rights and immunities hereinafter set forth".

ARTICLE III

"6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the

removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or if the loss or damage be not apparent, within three days, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event the carrier and the ship (any vessel used for carriage of goods by sea) shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods".

ARTICLE VII

"Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care and handling of goods prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by sea".

On the strength of the third paragraph in rule 6 of Article III, Mr. Michaelides submitted that the one-year period provided therein commenced to run as from "the date when the goods should have been delivered", i.e. the 31st December, 1961, and that, consequently, the present action, which was filed in June, 1965, was statute barred. He conceded, however, that if the provisions of rule 6 did not apply then the limitation period under the provisions of section 5 of the Limitation of Actions Law, Cap. 15, was six years, and in that case the present action would not be statute barred.

On the other hand, Mr. Chrysostomis for the plaintiffs conceded that the action instituted in 1962 in the District Court of Famagusta and the other proceedings taken by the plaintiffs did not affect the position.

Mr. Michaelides further submitted that so long as the goods were shipped on the m/v "Marigoulla", which was

not in fact provided by the defendants, the provisions of rule 6 came into play, irrespective of whether the goods were shipped on the agreed ship or not ; and that the essence of rule 6 was that goods should have been loaded on a ship. In support of his submission counsel referred to the decision in *Compania Colombiana de Seguros* v. *Pacific Steam Navigation Co.* [1964] 1 All E.R. 216. But, with respect, I do not think that that case is helpful in deciding the point raised in the present case because there the goods were actually loaded on the agreed ship, a bill of lading was issued and on the voyage part of the goods suffered a particular average loss ; while in the present case neither the ship agreed to be provided by the defendants nor any substitute was ever provided by the defendants. In fact, no ship of the defendants came to port and the goods were never loaded on any ship provided by them ; and, consequently, no bill of lading was ever issued. No other case decided either in the United kingdom or in the United States of America on the interpretation of rule 6 was cited to the Court by either counsel in the present case

The application of the Hague Rules is largely a matter of construction and, in construing the Rules the usual canons of construction should be applied by the Court. In construing rule 6 of Article III, the third paragraph of that rule, which provides for the one year limitation period, should, I think, be read in the whole context of the rule and not taken out of context and read and interpreted separately The first paragraph of rule 6 provides that notice of "loss or damage" and the general nature of such loss or damage shall be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery, or if the loss or damage be not apparent, within three days, and that such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading. Obviously this paragraph presupposes that the goods were loaded on the ship, that they were carried on the voyage, they reached their destination and they were discharged

The second paragraph of rule 6 provides that the notice in writing need not be given if the state of the goods has " at the time of their receipt " been the subject of a joint survey or inspection. There again, that provision presupposes the loading, carrying and discharge of the goods.

The third paragraph of rule 6 is the limitation provision with which we are concerned. It refers to the discharge from all liability of the carrier and the ship in respect of "loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered".

Finally, the fourth paragraph of rule 6 provides that in case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods. This provision presupposes that the goods were loaded on the ship and it would seem to refer to the first paragraph of the same rule.

It seems to me that the object of the provisions of rule 6 is clear: it is to give an early opportunity to the carrier to take note and inspect or survey an alleged loss or damage to the goods while there is time and before material evidence is destroyed. That is why the limitation period of one year is laid down for bringing suit, so that the carrier may not be at a disadvantage in defending a claim of loss or damage to goods. On the other hand, if the claim is for damages for breach of contract to provide a ship or shipping space the same considerations do not apply, and it may well be that it was intended that the ordinary limitation period of six years for claims of breach of contract should be applicable in such cases.

The Hague Rules apply only where there is a "contract of carriage", that is, a contract [illegible]ered by a bill of lading or any similar document of title (Article 1 (b)). This definition includes any contract of affreightment, however informally made in its inception, the parties to which intend that, in accordance with the custom of that trade, the shipper shall be entitled to demand at or after shipment a bill of lading setting forth the terms of the contract. To such a contract the Rules will apply even though no bill of lading was in fact demanded or issued: *Pyrene Co.* v. *Scindia Navigation Co.* [1954] 2 All E.R. 158, at page 164.

Article II is the crucial Article applying the rights and liabilities in the subsequent Articles to the operations it enumerates, that is to say, the Hague Rules are applied to every "contract of carriage" of goods by sea in relation to the "loading, handling, stowage, custody, care and discharge of such goods".

Under Article I (e) and VII, the Rules only apply from loading to discharge and the parties may make what terms they please as to the period " prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by sea ". Although in the case of *Goulandris Brothers* v. *Goldman* [1958] 1 Q.B 74, goods were *loaded* on the ship and were actually delivered, yet it was held that the cargo owners' cross-claim for damages for breach of the contract of carriage (by reason of the unseaworthiness of the vessel and the ship-owners' lack of diligence to make her seaworthy) of an amount equal to the cargo owners' general average contribution (claimed from them by the ship-owners) was *not* within Article III, rule 6, since, *inter alia*, the liability to general average contribution in this case was too remote from the cargo owners' goods ; therefore, the cross-claim was not barred by lapse of time.

It will be observed that although there was loading of the goods which were actually carried on the voyage, yet it was held that the connection between the damage in that case (i.e. the cargo owners' liability to pay general average contribution) and the cargo owners' goods was too remote

Consequently, in construing rule 6 of Article III, in the absence of any authority to the contrary, I am inclined to the view that the provisions of the third paragraph do not begin to apply until the stage of the loading of the goods on the ship agreed upon by the parties is reached and not before. It, therefore, follows that where goods were never loaded on the ship agreed upon which never came to port, as in the present case, the plaintiffs' claim for damages for breach of the contract to carry the goods is not within the ambit of Article III, rule 6.

For these reasons I hold that the plaintiffs' claim is not barred by lapse of time as the limitation period applicable to such actions is six years and not one year (see section 5 of the Limitation of Actions Law, Cap. 15). The defendants to pay to plaintiffs the costs of the hearing of this question.

Order in terms. Order for costs as aforesaid.