

1983 June 22

[SAVVIDES, J.]

1. UNICEF, OF NEW YORK AND BY SUBROGATION
L'UNION DES ASSURANCES DE PARIS,
2. L'UNION DES ASSURANCES DE PARIS,

Plaintiffs,

v. . .

ARMAR SHIPPING CO. LTD.

Defendants.

(Admiralty Action No. 447/77)

*Admiralty—Shipping—Bill of lading—Time bar—“Paramount clause”
—Hague Rules—Article III, rule 6—“Unless suit is brought
within one year after delivery”—Claim is not merely barred
under the Limitation Acts but is completely extinguished after
5 the year if no proceedings have been brought within the year—
Effect of the Limitation of Actions Law, Cap. 15—Limitation of
Actions (Suspension) Law, 1964 has no application—Hague
Rules not incorporated by legislation into the bill of lading but by
contract—Section 28(1) of the Contract Law, Cap. 149 not
10 applicable.*

Plaintiff No. 1 as owner of certain goods, loaded on the ship
“ARMAR” the property of the defendants for transportation
from Rotterdam Holland to Cuba in accordance with clean
bill of lading and which goods were short-landed and never
15 delivered to plaintiff No.1 at the port of destination, claimed the
sum of C£9,538 from the defendants as damages for loss or short
delivery of goods. The said ship arrived at Havana, Cuba, on
the 17.9.1975. Under clause 2 (Paramount Clause) of the bill
of lading it is provided that the Hague Rules* as enacted in the
20 country of Shipment “shall apply to this contract”.

* Article III rule 6 of the Hague Rules provides as follows:
“In any event the carrier and the ship 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.”

On the preliminary legal objection raised by the defendants that plaintiffs' claim is time-barred as this action was not brought within one year from the 17th September, 1975 which was the date when the ship 'ARMAR' arrived at its port of destination and/or within one year from the date of discharge and/or delivery of the goods:

Under clause 3 of the bill of lading jurisdiction to solve any dispute arising under the bill is vested in the Court of the country where the carrier has his principal place of business and the law of such country is the proper law of the contract 10

Held (after dealing with the meaning and effect of a "paramount clause" - vide pp. 365-366 post) that where a charter-party or a bill of lading incorporates the provisions of the Hague Rules that any suit for loss or damage should be brought within one year, the claim is not merely barred under the Limitation Acts, but is completely extinguished after the year if no proceedings have been brought within the year, that once the effect of the Limitation of Actions Law, Cap 15 is to bar a remedy and not to extinguish the right it has no application on cases where within a prescribed period the right is extinguished and any remedy is taken away, that a limitation of the latter kind does not fall within the provisions of the Limitation of Actions Law, Cap 15 and, therefore the Limitation of Actions (Suspension) Law, 1964 has no application, that the Hague Rules as implemented in the Carriage, of Goods by Sea Law, Cap 263, cannot be deemed as incorporated by legislation into the bill of lading under consideration as the law applies only to outward shipment, which is not the case in the present action; that they have, therefore, been incorporated by contract and they have the force of a term in the contract, that once the right of action has been extinguished as no proceedings have been taken within the period envisaged by the bill of lading, the plaintiffs have no cause of action against the defendants, and that this action will, therefore, be dismissed with costs in favour of the defendants 35

Held, further, on the question whether the provision restricting the time for enforcing a right under a contract is void under section 28(1) of the Contract Law, Cap 149.*

* Section 28(1) is quoted at p 373 post

That the contention of counsel for plaintiffs that the time limitation clause is invalid as violating section 28(1) of Cap. 149 is untenable.

Cases referred to:

- 5 *Nea Agrex S.A. v. Baltic Shipping Co. Ltd. & Another* [1976]
 2 All E.R. 842 at pp. 846, 847;
- The Ship "Ntana" and Another v. Georgiades S.A.* (1980)
 1 C.L.R. 386 at pp. 392, 393;
- Hollandia* [1982] 1 All E.R. 1076 C.A. at pp. 1078, 1079;
- 10 *Vita Food Products Inc. v. Unus Shipping Co.* [1939] A.C. 277.
 at p. 291;
- Aries Tanker Corporation v. Total Transport Ltd.* [1977] 1
 All E.R. 398;
- Eleni Andrea Avgousti v. Niovi Papadamou & Another* (1968)
 15 1 C.L.R. 66 at pp. 74, 75;
- Domestica Ltd. v. Adriatica & Another* (1981) 1 C.L.R. 85 at
 p. 95.

Admiralty action.

- 20 Admiralty action for C£9,538.- for breach of contract and/or
 breach of duty and/or negligence and/or loss or short delivery
 of goods shipped on board the ship "Armar".

A. *Skordis*, for the plaintiffs.

G. *Michaelides*, for the defendants.

Cur. adv. vult.

- 25 SAVVIDES J. read the following judgment. Plaintiff 1 in this
 action is the United Nations Children's Fund who was the
 owner of certain goods loaded on the ship "ARMAR" the
 property of the defendants on or about 29.8.75 for transporta-
 tion from Rotterdam, Holland, to Cuba in accordance with a
 30 clean Bill of Lading issued by the defendants to the plaintiff
 and which goods were short-landed and never delivered to
 plaintiff 1 at the port of destination.

Plaintiff 2 is an Insurance Company who, pursuant to a
 contract of insurance for the said goods has paid to plaintiff 1

the damage sustained by the loss of such goods and by subrogation and/or assignment to the rights of plaintiff 1, has instituted the present action together with plaintiff 1, its insured, against the defendant claiming -

- (A) 94,391 FMK (being the equivalent of C£9,538.-) for breach of contract and/or breach of duty and/or negligence of the defendants their servants or agents for damage and/or loss or short delivery of the plaintiffs' goods shipped on board the defendants' ship "ARMAR" for carriage from Rotterdam to HAVANA, Cuba, on or about the 29.8.75. 5
10
- (B) Any further or other relief the Honourable Court thinks proper.
- (C) Legal interest.
- (D) Costs.

The defendants entered an unconditional appearance and by their answer to the petition under paragraph 1 they raised the following legal objection: 15

"The defendants allege that the plaintiffs' claim is time-barred as this action was not brought within one year from the 17th September, 1975 which was the date when the ship 'ARMAR' arrived at its port of destination and/or within one year from the date of discharge and/or delivery of the goods carried under the bill of lading dated 29.8.75 referred to in the petition, and/or the date when the said goods ought to have been discharged and/or delivered to the consignees." 20
25

After the pleadings were closed, counsel for both parties applied that the legal point raised by paragraph 1 of the answer be set down for hearing as a preliminary point of law, as, in case such point was determined in favour of the defendants, then the proceedings would come to an end. Under the provisions of rule 89 of the Supreme Court of Cyprus in its Admiralty Jurisdiction, such point was set down for hearing as a preliminary point of law. For the purpose of the hearing of such point of law, both counsel put in by consent an agreed statement of facts signed by both of them (exhibit 1) and a copy of the Bill of Lading (exhibit 2). 30
35

The agreed statement of Facts (exhibit 1) reads as follows:

- 5 “1. That the goods which are the subject-matter of the claim in this action were shipped on board the ship ‘ARMAR’ at Rotterdam under a clean bill of lading dated 29.8.1975, copy of which is produced by consent, for carriage to Havana, Cuba.
2. That the said ship arrived at Havana, Cuba, on the 17.9.1975.
- 10 3. That under clause 2 (Paramount Clause) of the bill of lading it is provided that the Hague Rules contained in the International Convention for the unification of certain rules relating to the Bills of Lading, dated Brussels the 25th August, 1924, as enacted in the country of shipment shall apply to this contract.
- 15 4. That under Article III, Rule 6 (third paragraph), of the Hague Rules it is provided as follows:
- ‘In any event the carrier and the ship 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’”.
- 20

The Bill of Lading (exh. 2) in Clause 2, under the heading, “Paramount Clause” embodies the following:

25 “The Hague Rules contained in the International Convention for the unification of certain rules relating to Bills of Lading, dated Brussels the 25th August 1924, as enacted in the country of shipment shall apply to this contract. When no such enactment is in force in the country of shipment, the corresponding legislation of the country of destination shall apply, but in respect of shipments to which no such enactments are compulsorily applicable, the terms of the said Convention shall apply.”

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35 As to the meaning and effect of a “Paramount Clause” I wish to adopt what was said by Lord Denning, M.R. in *Nea Agrex S.A. v. Baltic Shipping Co. Ltd. and another* [1976] 2 All E.R. 842 at pp. 846, 847, which reads as follows:

“What does ‘Paramount clause’ or ‘clause paramount’ mean to shipping men? Primarily it applies to bills of lading. In that context its meaning is, I think, clear beyond question. It means a clause by which the Hague Rules are incorporated into the contract evidenced by the bill of lading and which overrides any express exemption or condition that is inconsistent with it. As I said in *Adamastos Shipping Co. Ltd. v. Anglo-Saxon Petroleum Co. Ltd.*:

‘When a paramount Clause is incorporated into a contract, the purpose is to give the Hague Rules contractual force: so that, although the bill of lading may contain very wide exceptions, the rules are paramount and make the shipowners liable for want of due diligence to make the ship seaworthy and so forth.’

..... It seems to me that when the ‘Paramount clause’ is incorporated, without any words of qualification, it means that all the Hague Rules are incorporated. If the parties intend only to incorporate part of the rules (for example, art IV), or only so far as compulsorily applicable, they say so. In the absence of any such qualification, it seems to me that a ‘clause paramount’ is a clause which incorporates all the Hague Rules. I mean, of course, the accepted Hague Rules, not the Hague-Visby Rules, which are of later date.

Counsel for the charterers acknowledged that it was a case of ‘all or nothing’. Either all the Hague Rules were incorporated, or none of them was. My answer is that by the simple incorporation of the ‘Paramount clause’, all were incorporated.”

The meaning of “Paramount clause” as given above was adopted by our Supreme Court in *The ship “Ntama” and another v. Georghiades S.A.* (1980) 1 C.L.R. 386 at pp. 392, 393.

Under clause 3 of the Bill of Lading, jurisdiction to solve any disputes arising under the bill is vested in the Court or the country where the carrier has his principal place of business and the law of such country is the proper law of the contract, except as provided elsewhere in the bill.

The defendants in this action are a company registered in Cyprus with a registered office of business at Limassol, Cyprus. In the answer to the petition it is alleged by the defendants that their principal place of business is Greece, a fact which
5 counsel for plaintiffs disputes, contending that defendants are a Cypriot company registered in Cyprus and this fact cannot be by-passed. It is for this reason that they invoke the jurisdiction of this Court by instituting proceedings in Cyprus, relying on paragraph 3 of the Bill of Lading that Cyprus is the principal
10 place of business of the defendants. As the question of jurisdiction has not been argued in these preliminary proceedings, I shall leave it open and I shall proceed to consider the arguments advanced in support of the preliminary point of law, on the assumption that Cyprus is the proper forum under clause 3 of
15 the Bill of Lading.

Learned counsel for defendants in addressing the Court embarked on the question as to whether institution of proceedings in Greece for the same subject matter may be considered as compliance with the limitation clause in the Bill of Lading.
20 Learned counsel for the plaintiffs, however, conceded that irrespective as to whether proceedings were instituted in Greece, the time limit fixed by the Bill of Lading had elapsed prior to the institution of the proceedings and, therefore, such question need not be decided by the Court.

25 Mr. Michaelides, counsel for the defendants, submitted that the plaintiffs' claim is statute barred, relying on the terms of the Bill of Lading, and, in particular, the paramount clause, whereby the Hague Rules were incorporated as binding the particular shipment. Mr. Michaelides submitted that by the incorporation
30 of such clause in the contract, the time limit fixed therein is binding and once the action was brought out of such time limit it was statute barred.

Mr. Skordis, counsel for the plaintiffs, based his argument on the contention that the question of limitation being a matter of
35 the *lex fori*, is governed by the law of Cyprus. If the limitation period referred to in the contract was one provided by statute, such period would be suspended as a result of the Limitation of Actions (Suspension) Law, 1964 (Law No. 57/64) which provides that the period of limitation fixed by any law in force at the time
40 of the enactment of such law is suspended as from the 21st

December, 1963, till such suspension is terminated by the Council of Ministers. If, on the other hand, the Hague Rules are deemed to be incorporated in the contract as a term thereof, the period under section 5 of the Limitation of Actions Law, Cap. 15, is six years and, therefore, such period has not expired. He further contended that in the case of contracts a period of limitation provided by statute cannot be abridged by a term of the contract, as such term would have offended section 28 of our Law of Contract, Cap. 149. 5

The history as to the need for the introduction of the Hague Rules, finally embodied in the International Convention for the unification of certain rules of law relating to bills of lading signed at Brussels in 1924, is briefly given by Lord Denning, M.R. in the *Hollandia* [1982] 1 All E.R. 1076 C.A. at pp. 1078, 1079, as follows: 10 15

“Up till 1921 shipowners were in a strong position vis-a-vis the cargo owners. They could issue bills of lading with all sorts of exceptions and limitations, and these were binding not only on the shippers but also on consignees, bankers, insurers and others who had not been parties to the original contract and had no control over it. This was most unsatisfactory. In the interests of international trade, it was very desirable that all international carriage of goods should be subject to the same terms and conditions. In an effort to get uniformity, there was a conference at The Hague which agreed on the Hague Rules. They were implemented in the United Kingdom by the Carriage of Goods by Sea Act, 1924.” 20 25

In Cyprus, the Hague Rules were implemented by the Carriage of Goods by Sea Law, 1927, now Cap. 263, whereby by section 2, the rules as set out in the Schedule thereto shall have effect in relation to and in connection with carriage of goods by sea in ships carrying goods from any port in Cyprus to any other port in or outside Cyprus. 30

In the present case the Bill of Lading, on the face of it, purports to be a bill of lading for the carriage of goods from Rotterdam to Cuba and therefore it is not a bill to which the Carriage of Goods by Sea Law, Cap. 263 would have any application. 35

Cap. 263 is a law applicable only to outward bills of lading and this is not a bill of lading for an outward shipment from Cyprus

Irrespective, however, of the provisions of the law, the Hague Rule may be incorporated in a bill of lading by contract
 5 Where, in order to comply with foreign legislation, the Rule are expressly incorporated in a bill of lading, the Court will treat them as incorporated into it contractually unless the foreign law is the proper law of the bill.

In *Vita Food Products Inc. v. Unus Shipping Co.* [1939] A.C.
 10 277 it was held at p. 291:

“It has been explained that the incorporation of these Acts may have only contractual effect, but in any case though the proper law of the contract is English, English law may incorporate the provisions of the law of another
 15 country or other countries as part of the terms of the contract, and apart from such incorporation other laws may have to be regarded in giving effect to the contract.”

The question of limitation is a matter of procedure and, therefore, it is governed by the *lex fori*. A distinction, however, has
 20 to be drawn between Statutes of Limitation which bar the remedy and those which extinguish the right. In the former case, their rules are rules of procedure, whereas in the latter, they are rules of substantive law. In Halsbury’s Laws of England, 4th Edition, Vol. 28, p. 266, para. 606 under the heading, “Conflict of Laws”, it reads:
 25

“Those provisions of statutes of limitation which bar the remedy and not the right are rules of procedure only, and form part of the *lex fori*. Therefore, if an action is brought
 30 in England, then wherever the cause of action arose the period of limitation is governed by the appropriate English limitation enactment, except where foreign law has extinguished the right as well as the remedy.”

And in the notes under the same page, it reads:

“Note (1). Those provisions of statutes of limitation which extinguish the right as well as the remedy are rules
 35 of procedure insofar as they bar the remedy, but are substantive law insofar as they extinguish the right. (*Dundee*

Harbour Trustees v. Dougall (1852) 1 Macq 317 at 321 H.L.).

Note (2). An English Court does not regard a foreign rule of limitation as mere procedure if the rule extinguishes both the right and the remedy. Once the right has gone in any case in which English Courts regard foreign law as applicable, an action in England will fail whether or not the time for bringing such an action in England has expired: *Huber v. Steiner* (1835) 2 Scott 304; *Harris v. Quine* (1869) L.R. 4 Q.B. 653.”

The effect of limitation under the Limitation Acts is only to take away the remedies by action; it leaves the right otherwise untouched and if the creditor whose debt is statute barred has any means of enforcing his claim other than by action or set off, the law does not prevent him from recovering by those means. Thus, money paid to a creditor by the debtor without appropriation, may be appropriated to the statute-barred-debt although the creditor cannot so appropriate money received on behalf but without the knowledge of the debtor. (see, Halsbury's Laws of England, 4th Edition, Vol. 28, para. 646 and the cases referred to therein).

Where a charterparty or a bill of lading incorporates the provision of the Hague Rules that any suit for loss or damage should be brought within one year, the claim is not merely barred under the Limitation Acts, but is completely extinguished after the year if no proceedings have been brought within the year. This principle has been well established in *Aries Tanker Corporation v. Total Transport Ltd.* [1977] 1 All E.R. 398 where it was held per Lord Wilberforce, Viscount Dilhorne, Lord Simon of Glaisdale, and Lord Edmund-Davies that (see p. 399):

“The time-bar on claims for loss or damage of goods imposed by the contract by virtue of the incorporation of art III, r 6 of the Hague Rules, was of the kind which, on expiry of the prescribed time limit, extinguished the claim and not merely barred the remedy. Accordingly, by the terms of the contract, after May 1974, i.e. one year after discharge of the cargo, any claim by the charterers for loss of cargo ceased to exist in law and had no relevance in proceedings commenced after May, 1974. It followed

that, by the terms of the contract, the charterers' claim for short delivery could not be raised by way of defence to the owners' claim for the unpaid freight. The fact that the charterers had asserted their claim within the time limit prescribed by art III, r 6, by deducting from the freight the estimated amount of the loss for the short delivery, did not, in the circumstance that the validity of the deduction had not been accepted, confer any right on the charterers or after the contractual position that suit in respect of their claim had to be brought before May, 1974."

Once the effect of the Limitation Act, 1939 in England as well as of our Limitation of Actions Law, Cap. 15 which corresponds to the English Act, is to bar a remedy and not to extinguish the right, it has no application in cases where within a prescribed period the right is extinguished and any remedy is taken away. A limitation of the latter kind does not fall within the provisions of the Limitation of Actions Law, Cap. 15 and, therefore, the Limitation of Actions (Suspension) Law, 1964 has no application.

As to the effect of Law 57/64 in cases where a remedy is extinguished by the express provision of an enactment, and the distinction between a time limit whereby the right of action is barred and one where the remedy is extinguished, our Supreme Court had this to say in *Eleni Andrea Avgousti v. Niovi Papadimou & Another* (1968) 1 C.L.R. 66 at pp. 74, 75:

"In order to avoid the time obstacle set by section 2(d), counsel for the appellant has argued that the period of two months provided therein is a period of limitation within the ambit of the Limitation of Actions (Suspension) Law 1964 (Law 57/64), and that, therefore, at the material time, it stood suspended, in view of section 3 of such Law, and could not prevent the appellant from being granted specific performance of his contract with the respondents.

By section 2 of Law 57/64 a 'period of limitation' is defined as 'any period prescribed by any provision of a legislative nature in force at the time of the coming into operation of this Law within which any action to which such provision relates is required to be brought': it is only such a period which, by virtue of section 3 of the same

Law, has been suspended as from the 21st December, 1963, and until such date as the Council of Ministers may in future appoint.

Bearing in mind the object of Law 57/64, as well as the wording of its relevant provisions, and particularly the definition of 'period of limitation', we are of the opinion that the time-limit specified in section 2(d) of Cap. 232 is not a 'period of limitation' in the sense of Law 57/64; more than two months after the date of a contract for the sale of immovable property an action may still be brought, in case of breach thereof (as it was done in this case), for the purpose of redressing such breach; what is excluded, therefore, by means of the said time-limit, is not a right of action but a special remedy to be claimed by means of such action, namely, an order for specific performance." (Per Triantafyllides, J. as he then was).

The Hague Rules as implemented in the carriage of goods by Sea Law, Cap. 263, cannot be deemed as incorporated by legislation into the bill of lading under consideration as the law applies only to outward shipment, which is not the case in the present action. They have, therefore, been incorporated by contract and they have the force of a term in the contract.

With the above in mind and assuming that in the present case the Hague Rules were incorporated into the bill by statute, which is not the case, the time limit prescribed under Article III, Rule 6, 3rd paragraph of the Hague Rules which were incorporated into the bill of lading by the "Paramount Clause" would not have been affected by the limitation of Actions (Suspension) Law, 1964, as under such provision in the bill, the right had been extinguished prior to the date of the institution of the action.

It has been argued by counsel for the respondents that if in the present case the Hague Rules are deemed as incorporated by contract in the bill of lading and not by statute, any provision whereby the time for enforcing a right under a contract is restricted is void under section 28(1) of the Law of Contract, Cap. 149.

Section 28(1) reads as follows:

5 “28(1) Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the Courts, or which limits the time within which he may thus enforce his rights, is void to that extent.”

This section corresponds to section 28 of the Indian Contract Act. Reading in Pollock and Mulla, Indian Contract and Specific Relief Acts, 9th Edition at pp. 295, 296:

10 “Limitation of time to enforce rights under a contract. Under the provisions of this section, an agreement which provides that a suit should be brought for the breach of any terms of the agreements within a time shorter than the period of limitation prescribed by law is void to that extent. The effect of such an agreement is absolutely to restrict the

15 parties from enforcing their rights after the expiration of the stipulated period, though it may be within the period of limitation. Agreements of this kind must be distinguished from those which do not limit the time within which a party may enforce his rights, but which provide for a re-

20 lease or forfeiture of rights if no suit is brought within the period stipulated in the agreement. The latter class of agreements are outside the scope of the present section, and they are binding between the parties. Thus a clause in a policy of fire insurance which provides that ‘if the claim

25 is made and rejected, and an action or suit be not commenced within three months after such rejection all benefits under this policy shall be forfeited’, is valid, as such a clause operates as a release or forfeiture of the rights of the assured if the condition be not complied with, and a suit

30 cannot be maintained on such a policy after the expiration of three months from the date of rejection of the plaintiff’s claim. It was so held by the High Court of Bombay in the Baroda Spg. & Wvg. Co.’s case, and similarly where a bill of lading provided that ‘in any event the carrier and the ship

35 shall be discharged from all liability in respect of loss or damage unless a suit is brought within one year after the delivery of the goods’, it was held that the clause was valid. But this cannot be said of a clause in a policy in the following form: ‘No suit shall be brought against the company

40 in connection with the said policy later than one year after the time when the cause of action accrues’. Such a clause

does not operate as a release or forfeiture of the rights of the assured on non-fulfilment of the condition, but is to limit the time within which the assured may enforce his rights under the policy, and it is therefore void under the present section. The contrary, however, was held by the High Court of Bombay, the ground of the decision being that the clause amounted in effect to an agreement between the parties that if no suit were brought within a year, then neither party should be regarded as having any rights against the other. This decision was adversely criticized in the Baroda Spg. & Wvg. Co 's case by Beaman J. and Scott C J., it seems rightly. The third judge, Batchelor J., who was also a member of the Court in the *Hirabhai* case, acknowledged that it was difficult to hold that the words before the Court in the *Hirabhai* case were susceptible of the meaning attributed by the Court. In a Calcutta case, one of the conditions of a policy of marine insurance was that no suit by the assured should be sustainable in any Court, unless the suit was commenced within six months next after the loss, and that if any suit was commenced after the expiration of six months, the lapse of time should be taken as conclusive evidence against the validity of the claim. It was held that the assured could not sue on the policy after the expiration of six months. No reference was made either in the argument of counsel or in the judgment to the present section. An agreement providing that a person in whose favour a provision for maintenance was made is not entitled to sue for maintenance which had been in arrears for more than one year is void. A rule under s. 35 of the Post Office Act limiting the liability in respect of sums specified by remittance unless a claim is preferred within one year from the date of the posting of the article is void as beyond the powers conferred by the section. And even if it be treated as a contract it is void under s. 28 of the Contract Act. A contract which does not limit the time within which the insured could enforce his rights and only limits the time during which the contract will remain alive, is not hit by s. 28 of the Contract Act. In short, an agreement providing for the relinquishment of rights and remedies is valid, but an agreement for the relinquishment of remedies only falls within the mischief of s. 28".

The construction of section 28 was considered by this Court in the recent case of *Domestica Ltd. v. Adriatica and Another* (1981) 1 C.L.R. 85 in which A. Loizou, J. after referring to the Indian Contract Act and the Indian cases on the construction of section 28, had this to say at page 95:

“The question therefore for determination is whether the words ‘on penalty of prescription within six months’ amount to an agreement restricting the parties from enforcing their rights after the expiration of a stipulated period. though it may be within the period of limitation, which under the aforesaid section are void to that extent, or an agreement which does not limit the time within which a party may enforce his rights *but it provides for a release or forfeiture of rights, if no suit is brought within the period stipulated in the agreement in which case it would be outside the scope of this section and binding between the parties.*” (the underlining is mine).

In the light of the above, I find that the contention of counsel for plaintiffs that the time limitation clause is invalid as violating section 28(1) of Cap. 142 is untenable.

In the result, once the right of action has been extinguished as no proceedings have been taken within the period envisaged by the bill of lading, the plaintiffs have no cause of action against the defendants. This action is, therefore, dismissed with costs in favour of the defendants.

Action dismissed. Order for costs in favour of defendants.