1983 December 29

[A. Loizou, J.]

CYPRUS PHASSOURI PLANTATIONS CO. LTD.,
Plaintiffs.

v.

1. ADRIATICA DI NAVIGAZIONE SP A, OF VENICE THROUGH THEIR AGENTS A.L.MANTOVANI & SONS
2. THE SHIP "CORRIERE DELL OVEST" NOW LYING AT THE PORT OF LIMASSOL,

Defendants.

(*Admiralty Action No.* 22/80).

Stay of proceedings—Carriage of goods by sea—Bill of lading—Foreign jurisdiction clause—Discretion of the Court—Principles applicable—Dispute more closely connected with foreign country and witnesses more readily available there—Stay granted.

Admiralty—Carriage of goods by sea—Bill of lading—Foreign jurisdiction clause—Not repugnant to the laws of Cyprus and in particular to section 28 of the Contract Law, Cap. 149—"Damage ... or loss of the loaded goods" in the bill of lading—Includes misdelivery or nondelivery.

The plaintiffs as owners of goods which were shipped on board defendant 2 ship under a contract of carriage contained in a bill of lading sued the defendants claiming Stg. £10,298.88 by way of damages for the loss suffered by the plaintiffs by reason of the defendants breach of the contract of carriage. Plaintiffs alleged that the defendants, in breach of the said contract and/or their duty as carriers for reward, did not deliver the said goods to the respondents—plaintiffs or to their Order, but delivered them to others and/or without the production of or the delivery up of, or against the said bill of lading. By means of the present application the defendants sought "an order of the Court to

set aside the writ and/or the service thereof and/or to stay the proceedings on the ground that this Court is not seized with jurisdiction to try the present case".

Defendants relied on clause 26 of the Bill of lading which reads as follows:

> "Any claim for damage, shortage, deterioration or loss of the loaded goods must be filed in writing to the agents of the Company at the port of destination within 8 days after the discharge date, failing which the consignee loses any right to take his action or file his claim.
>
> In lack of a friendly agreement, the suit must be brought before the competent Court of Venice, on penalty of prescription within 6 months after the delivery date of the loaded goods, or, in case of total loss, within 6 months after the date when said goods were supposed to be at destination.
>
> Both the Shipper and the Consignee, as well as any other person interested in the goods, expressly waive the competence of any other jurisdiction.
>
> All what is not provided for in the present carriage conditions shall be ruled by the Code of Maritime Law in force in the Italian Republic".

Held, that this Court has a discretion whether or not to stay the proceedings; that the general rule is that a foreign jurisdiction clause should be enforced and that the Court would be very slow to refuse stay if the claim was the sort of a claim which could be expected when the agreement was made and the plaintiffs had to show strong grounds for not giving effect to such foreign jurisdiction clause (see *Kislovodsk* [1980] 1 Lloyd's Rep. 183); that on the facts of this case this Court has come to the conclusion that it should exercise its discretion in favour of a stay as this dispute was more closely concerned with Italy, in that the carrying vessel was Italian, witnesses as to facts were more readily available in Italy and it would be more convenient to be tried there where third parties reside and process can be

issued against them and that according to Article 26 of the Bill of lading what is not provided for in the carriage conditions shall be ruled by the code Maritime Law in force in the Italian Republic: that finally the plaintiffs have not satisfied this Court that there is any good reason for it to refuse the application for the stay of these proceedings; accordingly a stay is hereby granted on condition that the time bar issue is waived as assurance has already been given by counsel for the applicants/defendants.

Held, further, (1) that the term "damage ..... or loss of the loaded goods" which appears in clause 26 of the bill of lading includes misdelivery or non-delivery.

(2) That a bill of lading and its foreign jurisdiction clause—26—in particular are not repugnant to section 28 of the Contract Law, Cap. 149 or to the laws of Cyprus.

Application granted.

Cases referred to:

Anglo-Saxon Petroleum Co. v. *Adamastos Shipping Co.* [1957] 2 Q.B. 233 at p. 253;

Renton and Co. v. *Palmyra Trading Corporation of Panama* [1957] A.C. 149;

Rambler Cycle Co. v. *P. & O. Steam Navigation Co.* [1968] 1 Lloyds Rep. 42;

Photos Photiades & Co. v. *Jadranska Slobodna Plovidba* (1963) 2 C.L.R. 345; and on appeal (1965) 1 C.L.R. 58;

Cubazucar and Another v. *Camelia Shipping Co. Ltd.* (1972) 1 C.L.R. 61;

The Eleftheria [1969] 2 All E.R. 641;

Sonco Canning Ltd. v. *Adriatica* (1972) 1 C.L.R. 210 at p. 213;

Carvalho v. *Hull Blyth (Angola)* [1979] 3 All E.R. 280;

The Makefjell [1976] 2 Lloyd's Rep. 29;

The Adolf Warski [1976] 2 Lloyd's Rep. 241;

The Fehmarn [1958] 1 All E.R. 333; [1957] 1 W.L.R. 815; [1957] 2 All E.R. 707;

Chowdhury v. *Mitsui O.S.K. Lines Ltd.* [1970] 2 Lloyd's Rep. 272;

Kislovodsk [1980] 1 Lloyd's Rep. 183.

Application.

Application by defendants for an order setting aside the writ and/or service thereof and/or staying the proceedings on the ground that the Court is not seized with jurisdiction to try the case.

V. Charakis with *Chr. Mitsides*, for the applicants.

St. McBride, for the respondents.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present application the applicants-defendants seek: (a) an order of the Court to set aside the writ and or the service thereof and or to stay the proceedings on the ground that this Court is not seized with jurisdiction to try the present case, (b) any further or other order the Court may consider fit and proper.

Defendants 1 are an Italian Shipping Company operating for many years in Cyprus through their Agents A. L. Mantovani and Sons Ltd., their ships calling regularly at Cyprus ports. They and the defendant ship had been sued by the respondents-plaintiffs, being the owners and or shippers of goods shipped on board the said vessel at Limassol for carriage to Venice under a contract of carriage contained in a bill of lading Number 1D, dated the 21st May 1979.

Their claim is for:-

(a) The sum of Stg. £10,298.88 plus C£22,490 by way of damages for the loss suffered by them by reason of the defendants' breach of the said contract of carriage and/or breach of duty.

(b) Interest at the rate of 9% per annum on the above amount as from 26.5.1979 till the date of judgment.

(c) Alternatively to (a) and (b) above, damages for breach of contract and/or duty, and/or negligence and/or otherwise.

The respondents-plaintiffs, as alleged in the petition, were at all times material to the action the holders of the aforesaid Bill of Lading issued by or on behalf of the defendants or either

of them and the owners of 3,000 standard cartons of Cypius selected Valencia Late Oranges "Red Seal" Class 1, which the applicants-defendants or either of them undertook to carry from Limassol to Venice, Italy, in the defendant vessel and there "deliver same to the plaintiffs or their order and/or to the holders of the said bill of lading". In breach of the said contract and/or their duty as carriers for reward the applicants-defendants, it is claimed, did not deliver the said goods to the respondents-plaintiffs or to their order, but on or about the 25th May, 1979, delivered to others and/or without the production of or the delivery up of or against the said Bill of Lading. As a result the respondents-plaintiffs allege to have suffered loss and damages for which they give particulars and claim as per their endorsement on the writ of summons.

The applicants-defendants in support of their present application invoke the provision of Clause 26 of the Bill of Lading which reads:

> "Any claim for damage, shortage, deterioration or loss of the loaded goods must be filed in writing to the agents of the Company at the port of destination within 8 days after the discharge date, failing which the Consignee loses any right to take his action or file his claim.
>
> In lack of a friendly agreement, the suit must be brought before the competent Court of Venice, on penalty of prescription within 6 months after the delivery date of the loaded goods, or, in case of total loss, within 6 months after the date when said goods were supposed to be at destination.
>
> Both the Shipper and the Consignee, as well as any other person interested in the goods, expressly waive the competence of any other jurisdiction.
>
> All what is not provided for in the present carriage conditions shall be ruled by the Code of Maritime Law in force in the Italian Republic".

The first question that has to be resolved is whether the term "damage ____ or loss of the loaded goods" which appears

in Clause 26 of the Bill of Lading, includes misdelivery or non-delivery to the consignee named in the Bill of Lading, or refers only to conversion of the goods by the carrier within the meaning of the said Clause. It has been argued on behalf of the respondents-plaintiffs that as appearing from the affidavit of the applicants-defendants, the goods in question were not delivered to the Bill of Lading holder after their discharge, but against a Letter of Indemnity to a person who was not such holder, and the plaintiffs' claim in this connection is framed in damages which they have sustained because of the failure of the defendants to deliver the goods against the production of the Bill of Lading and/or because of breach of their duty as carriers for reward and is not made in respect of damage, shortage, deterioration or loss of the loaded goods prior to discharge, and consequently such claim is not covered by Clause 26.

The answer of the applicants/defendants has been that the words "damage or loss of the loaded goods" and in particular the word "loss", is not limited to physical loss or damage but covers liability of a carrier for loss caused to the shipper for misdelivery or other loss in connection with the goods in question.

I have had the advantage of full argument on this point by both counsel as I found it necessary to reopen the case for that purpose. I was referred to a good number of authorities turning on the interpretation given to the words "loss or damage" that are also found in the Hague Rules, and in other instruments.

The words "loss or damage" which occur repeatedly throughout the Hague Rules which form part of the Schedule to the Carriage of Goods by Sea Law, Cap. 263, or the English corresponding Act of 1924, were judicially interpreted in a number of cases.

In the *Anglo-Saxon Petroleum Co.* v. *Adamastos Shipping Co.* [1957] 2 Q.B. 233 the following were stated by Devlin J. at p. 253:

> "The last question asks whether the words 'loss or damage, in section 4(1) and (2) of the Act relate only to physical loss of or damage to goods. The words themselves are not qualified or limited by anything in the section. The

Act is dealing with responsibilities and liabilities under contracts of carriage of goods by sea, and clearly such contractual liabilities are not limited to physical damage. A carrier may be liable for loss caused to the shipper by delay or misdelivery, even though the goods themselves are intact. I can see no reason why the general words 'loss or damage' should be limited to physical loss or damage. The only limitation which is, I think, to be put upon them is that which is to be derived from section 2 which is headed: 'Risks'. The 'loss or damage' must, in my opinion, arise in relation to the 'loading, handling, stowage, carriage, custody, care and discharge of such goods', but is subject to no other limitation. In *G. H. Renton & Co.* v. *Palmyra Trading Corp. of Panama* [1957] A.C. 149 the House of Lords held that the words 'loss or damage to or in connection with goods' in article 111, rule 8, of the Hague Rules were not limited to actual loss of physical damage to the goods; and I should give the same meaning to 'in relation to' as to 'in connection with' ".

In Carver's Carriage by Sea Volume I the following are stated in connection with the above passage at p. 195:

"The illuminating passage of Devlin J.'s judgment was approved in the same case in the House of Lords reported in [1959] A.C. 133, 157 by Viscount Simonds and Lord Somervell and the law must be taken to be established accordingly;"

And at p. 193 of the same volume we find the following:

"The words 'loss or damage to or in connection with goods' in Article 111 r.8, it has now been held, cannot be construed as limited to 'loss or damage to' goods—they are wide enough to cover, for instance, loss in connection with goods arising because they are discharged at the wrong port".

And as authority in support of this statement of the Law there is cited the case of *Renton and Co.* v. *Palmyra Trading Corporation of Panama* [1957] A.C. 149, a House of Lords case.

Adopting the construction of Devlin J. in the *Anglo-Saxon Petroleum* case I hold that the words "loss" or "damage" in the said clause 26 cover loss caused by misdelivery.

Reference may also be made to the case of *Rambler Cycle Co.*, v. *P. & O. Steam Navigation Co.* [1968] 1 Lloyd's Rep. 42 in which the Malaysian Federal Court dealt also with the question of non-delivery and referred to the authorities hereinabove mentioned.

All these cases afford considerable assistance in approaching the words "loss of the loaded goods" which appear in Clause 26. In my view the words "loss of the loaded goods" include misdelivery or non-delivery. The words appearing in this Clause to the effect that any claim for damage, shortage, etc., must be filed in writing to the agents at the port of destination within eight days "after the discharge date", does not change the aforesaid meaning of the word "loss" inasmuch as there is bound to be a discharge date, both in respect of goods lost prior to discharge or goods misdelivered after discharge, nor does the reference to the case of total loss in the second paragraph of Clause 26 make any difference as that refers to a different eventuality and does not exclude by itself the aforesaid interpretation.

Relevant to this issue inevitably is the duty of a master as to delivery at port of discharge, but I need not go into the matter which is dealt with extensively in Scrutton on Charterparties 18th edition at p. 293 et seq.

Having come to this conclusion, I shall proceed now to examine the remaining issues raised in this case.

The applicants further maintain that the breach was allegedly committed in Italy, the relevant evidence on the issues of fact is more readily available in Italy, that it is almost "impossible for either party and especially for them to produce such evidence in Cyprus", and that "there is more security for the plaintiffs' claim and the prospects of enforcement of a judgment in Italy are greater if the case is tried there".

With regard to the circumstances relating to the arrival and delivery of the goods in Italy the applicants have filed a supplementary affidavit which reads as follows:

"(1) Further to my affidavit of 23.6.1980 and in particular

as regards para 5(c) thereof, the following is herewith added thereto:

(a) On or about the 21.5.1979 the Plantiffs shipped on board the defendant ship No. 2 a consignment of oranges for Venice. The ultimate consignees was a certain firm Eurimex of Geneva, Switzerland. According to the relevant Bill of Lading a certain Salvatori S.A. of Venice was to be notified. The said B/L was issued by the Defendants' No. 2 agents and duly delivered to the shippers.

Upon arrival of the goods in Venice, the said Salvatori S.A. were notified according to the B/L and the responsibility of the carriers.

Although repeatedly notified, the said Salvatori did not produce the B/L to take delivery of the goods but informed the Defendants that they were not as yet in possession of the relevant B/L.

By their letter dated 28.5.1979, a photocopy and certified translation of which is attached hereto marked exhibit "A", the said Salvatori in their capacity as clearing agents and/or agents of the consignees and/or agents of the shippers, requested from the Defendants delivery of the goods without production of the relevant B/L and undertook to produce a Bank Guarantee instead.

As the consignment in question consisted of perishable goods and in order to minimize the loss of all parties concerned, the Defendants delivered the goods against production of the said Guarantee according to the custom of the port and established practice.

On delivery of the goods as aforesaid, it was established that the said goods were found decayed. A survey was carried out in Venice to that effect.

(b) In view of the above, the production of evidence as to the following is necessary:

(i) The notification of Salvatory

(ii) The conditions under which no B/L was received

(iii) The production of the aforesaid Guarantee, the conditions under which it was issued and the legislation

rules and regulations pertaining to the production and release of Bank guarantees in Italy

(iv) The custom of the port

(v) The delivery of the goods and the survey held in Venice

All the above evidence is available only in Italy and the Defendants have no possibility to issue Summons of Witness to third parties residing in Italy to come and testify in Cyprus, thus being deprived of their right to produce evidence substantial for their defence but even if such evidence could be made available in Cyprus, the costs to be incurred by the Defendants would be unjustifiedly high".

The respondents-plaintiffs maintain that the Court has jurisdiction to try this case inasmuch as proof of the breach is more readily available in Cyprus inter alia because the original bill of lading against which the cargo ought to have been delivered to in the hands of the respondents-plaintiffs, here in Cyprus that parts of the said bill of lading in particular clause 26 are repugnant to the Laws of Cyprus, that there is in fact no defence available to the defendants short of proving that they made delivery against the bill of lading in question, which they have not done, and that it is inequitable to require the plaintiffs to go to Italy for no purpose and which would in fact be most inconvenient and far more costly to them.

Also that if these proceedings are in fact stayed they will now, be faced with a time-bar in Italy. On this point, however, the applicants-defendants through their counsel stated that if the proceedings are stayed and new proceedings are instituted in Italy they will not raise, and in fact they will waive this time-bar issue.

In the supplementary affidavit dated the 27th May 1981, filed on behalf of the respondents-defendants the following are stated:

"

3. (a) I am further advised by Mr. S. G. McBride that non of the matters set out in the said affidavit in any event afford any defence to the claim of the Plaintiffs against the Defendants which, in short, is that the Defendants

delivered cargo to others other than the holder of the bill of lading and the Plaintiffs have suffered loss thereby.

(b) What in effect the Defendants are trying to do is to say that though they have no defence to the claim they want the Plaintiffs to sue the Defendants in Italy so that the Defendants may obtain procedural advantages to the detriment of the Plaintiffs against the persons who gave the Defendants a letter concerning cargo Ex S/S *Corriere del Nord.*

4. Till the consignees had paid cash for the documents in question the consignees/notify address had no right to the cargo in question and the Defendants had no right to release the cargo in question to others other than the holders of the bill of lading, and if they did so they did so at their peril.

5. In any event the Defendants are in no way prejudiced by having the action tried in Cyprus or having judgment go against them in Cyprus. Having paid the judgment it is open to the Defendants, so I believe and am advised, to go against the persons in Italy who induced the Defendants to release the cargo to them by production of documents other than the bill of lading. I therefore say that the contents of paragraph 2 of the said affidavit are unwarranted and unsound and are invalid as an excuse to try to oust the jurisdiction in this case.

6. The documents in question including the bill of lading were duly sent to the bank nominated by the intended ultimate consignees referred to in paragraph 1, of the said affidavit namely the Credit Commercial de France (Suisse) SA through Grindlays Bank Ltd. The said documents were duly received by the Credit Commercial de France (Suisse) SA on 28.5.1979, so I have been informed by Grindlays Bank Ltd. It should be noted that the documents were in the hands of the Credit Suisse Commercial de France (Suisse) on the very day of the making of the letter of Salvatori to the Defendants, which inter alia states that the bill of lading had not yet been received by the consignees.

7. At no time did the said intended ultimate consignee ever take up the said documents and they never became entitled to take delivery of the said cargo.

8. Eventually the documents (and the bill of lading) were returned to the Plaintiffs on or shortly after 28.8.1979. On 6.9.1979 our advocates then took the matter up on our behalf with the Defendants, vide Exhibit 'B' to the Respondents original affidavit.

9. (a) Finally I attach hereto a photocopy of the original bill of lading ID referred to above by me in this affidavit and I would invite the attention of the Court to Article 26 thereof for its full meaning and effect.

(b) I am advised by my said Advocate that in any event, if any effect can be given to this Article, which is denied, it has no application in the circumstances of the facts alleged in the Petition in this Action.

(c) The claim in this action is not a claim for damage, shortage, deterioration or loss of the loaded goods, but,

(d) this is a claim for a fundamental breach of contract and for failure to deliver the goods to the holder of the bill of lading. In this connection I would also invite the attention of the Court to Article 19 of the bill of lading.

. . . . . "

The Law relating to contracts providing for disputes to be decided by foreign Courts has been well settled in Cyprus by reference to the English authorities in which the relevant principles have been enunciated. In the case of *Photos Photiades & Co.*, v. *Jadranska Slobodna Plovidba*, (1963) 2 C.L.R. p. 345, Vassiliades J., as he then was held that if the plaintiffs have in fact knowingly agreed that disputes arising from their contract should be referred to arbitration or to a foreign tribunal, or shall be determined according to the Law of a foreign country "there is no indisposition on the part of the Courts of this country to use Lord Hodson's words, in the *Fehmarn's* [1958] 1 All E.R. p. 333," to give effect to such a bargain. Moreover in that case the question of convenience was also examined in

relation to the exercise of his discretion in the matter. On appeal (*Jadranska* v. *Photos Photiades and Co.*, (1965) 1 C.L.R. 58), his approach was upheld. Josephides, J., in delivering the judgment of the Court referred with approval to the case of *Fehmarn* (supra) and said that "on the authorities there is a prima facie presumption that the Court will insist on the parties honouring their bargain in cases where they have agreed that all disputes arising under a contract should be determined by a foreign Court". The Court will, however, consider whether there are sufficient grounds for displacing prima facie presumption so as to entitle the parties to take advantage of the jurisdiction of the Court.

In the case of *Cubazucar and Another* v. *Camelia Shipping Company Ltd.*, (1972) 1 C.L.R. p. 61, I had the occasion to review the authorities with regard to the Law governing the stay of proceedings in view of a provision in a contract between the parties that disputes arising therefrom would be referred to a foreign Court for adjudication. I followed what was held by the Full Bench of this Court in *Jadranska case* (supra) and I referred also to the case of *The Eleftheria* [1969] 2 All E.R. p. 641 where Brandon J., summarized the legal position on this point at p. 645. I further stated that on the authorities it was upon the plaintiffs to show good cause against the stay of the proceedings. In *Sonco Canning Limited* v. "*Adriatica*" (1972) 1.C.L.R. p. 210 the question of an agreement to refer disputes arising under a contract to a foreign Court was also considered, and on the basis of all the aforesaid authorities at p. 213 I summed up the legal position in relation to the arguments advanced in that case is as follows:

> "It is now well settled that the burden of showing strong cause why an agreement to refer disputes to a foreign Court should not be observed, and why the Court's discretion should not be exercised in favour of such a stay, is upon the plaintiff. In exercising such discretion, the Court must take into account all the circumstances of the particular case, including in what country the evidence on the issue of facts is situated or more readily available and the effect of that on the relative convenience and expense of trial as between Cyprus and foreign Courts.
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> Another fact to be considered is whether the law of the

foreign Court applies and if so, whether it differs from the Cypriot law in any material respects. On this last point, it may be observed that there has been no evidence to show what is the foreign law and in the absence of such evidence, it should be taken as being similar to our law. The only thing that has been mentioned was that by the Italian Laws the claim is statute barred, but counsel for the applicants has stated that if the proceedings are stayed and new proceedings instituted in Italy, they are prepared to waive this statute bar issue.

A point which has to be examined is also with what country either party is connected and how closely. Of course the plaintiffs are a Cyprus Company with business here, but the defendants are not a company which has no links in Cyprus. They have been represented for many years by the firm A.L. Mantovani & Sons Ltd. and their ships call regularly in Cyprus ports. There is no question and it has been argued that the defendants are not genuinely desiring trial in their country or that they are only seeking procedural advantages. The issue does not arise that the plaintiffs would be prejudiced by having to sue in the foreign Court, because they would be deprived of security for that claim or be unable to enforce any judgment obtained or be faced with a time bar not applicable here or for political, racial, religious or other reasons be unlikely to get a fair trial".

The legal principles relating to these issues seem to come up for consideration, obviously in view of the extensive use made of foreign jurisdiction clauses in commercial transactions. In the case of *Carvalho* v. *Hull Blyth* (*Angola*) [1979] 3 All E.R. p. 280 the Court of Appeal in England dealt once more with these issues and a review of the authorities was made, including a reference inter alia to *The Eleftheria* (supra), as well as to *The Makefjell* [1976] 2 Lloyd's Rep. 29 and *Adolf Warski* [1976] 2 Lloyd's Rep. 241, as well as the *Dicey's Conflict of Laws* (Dicey and Morris The Conflict of Laws 9th edition p. 222).

It was held that the Court had a discretion to refuse a stay if the plaintiff proved that it was "just and proper" or that there was "strong cause" to do so. Those being merely different

ways of expressing the same test. The dicta of Brandon J., in *The Eleftheria* (supra) at p. 645 and of Willmer J., in *The Fehmarn* (supra) at p. 710 were applied.

The respective arguments advanced by the two sides appear in the affidavits filed and which I have at length quoted earlier in this case. I shall not therefore attempt to condense them as I may either be doing injustice to their cases or be taken as having omitted to consider points that ought to have been in fact considered. There is, however, one point that has to be dealt with at some length, namely, the one arising from what was said and decided in the case of *Chowdhury* v. *Mitsui O.S.K. Lines, Ltd.*, [1970] 2 Lloyd's Rep. p. 272, a judgment of the Supreme Court of Pakistan in which a jurisdiction clause in a bill of lading giving exclusive jurisdiction to a foreign Court was examined if it could be enforceable in Pakistan in view of the provisions of section 28 of the Contract Act of 1872, which section is in substance identical to section 28 of our Contract Law, Cap. 149 and also identical to section 28 of the Indian Contract Act. It was held by the Supreme Court of Pakistan in the said case that section 28 was a bar to giving exclusive jurisdiction to a foreign Court by contract. That foreign jurisdiction clauses even when they purported to give jurisdiction to a Court in a foreign country were in the nature of arbitration clauses which came within the exceptions to section 28 of the Contract Act and therefore should be dealt with in the same manner as other arbitration clauses. That if the jurisdiction clause would have indirectly the effect of relieving the carrier from liability, he would normally have incurred, under Pakistan Law then the Courts in Pakistan would not honour such a clause and that the burden of proof for staying the proceedings in Pakistan was on the person invoking the jurisdiction clause.

I cannot subscribe to this approach as in the first place I feel bound by the judgment of the Full Bench of this Court in *Jadranska* (supra) and the consistency with which that judgment has been followed by our Courts; and secondly because in *Pollock and Mulla* 9th edition at p. 297 in relation to a foreign jurisdiction clause the following is stated:

> "A bill of lading in connection with a contract of affreightment of goods to be carried to Calcutta entered into between two Swedish parties in Sweden provided for the decision

of the disputes arising out of the contract according to Swedish Law in Sweden.

The clause was held to be valid and not against public policy. (*South East Asia Co. Ltd.*, v. *B.P. Herman & Mohatta Ltd.*, 1962, A. Cal. 601.) A clause in a bill of lading limiting jurisdiction in respect of disputes to Italian Courts was upheld as the Italian Court mentioned had jurisdiction to try the suit under the ordinary law. (*Lakshminarayan Ramniwas* v. *Lloyds Trestino Societa*, 1960 A. Cal. 155 on appeal from (1959) A. Cal. 669; *Singhal Transport* v. *Jesaram* (1968) Raj. 89; *Lakshminarayan Ramniwas* v. *Compagnia Genovese*, 1960 A. Cal. 545; *Motibhai Gulabdas & Co.* v. *Mahalakshmi Cotton Mills Ltd.*, 91 Cal. L.J. 1; *St. Pierre* v. *South American Stores* [1936] 1 K.B. 382; *Adam Abdul Shakoor* v. *Ali Mohammad* (1940) 1 Cal. 497; 1941 A. Cal. 236; *Maritima Italiana* v. *Burjor Framroze*, 54 Bom. 278; 1930 Bom. 185; *The Fehmarn* [1957] 1 W.L.R. 815; [1957] 2 All E.R. 707 (Reference to U.S.S.R. Courts)".

It may be noted that among the authorities given for the aforesaid proposition is also the *Fehmarn's* case (supra). A Bill of Lading, therefore, and its Clause 26 in particular, are not repugnant to the Laws of Cyprus.

The net result of the Law as above stated is that I have a discretion whether or not to stay the proceedings and that the general rule is that a foreign jurisdiction clause should be enforced and that the Court would be very slow to refuse stay if the claim was the sort of a claim which could be expected when the agreement was made and the plaintiffs had to show strong grounds for not giving effect to such foreign jurisdiction clause (see *Kislovodsk* [1980] 1 Lloyd's Rep. 183).

On the facts of this case I have come to the conclusion that I should exercise my discretion in favour of a stay as this dispute was more closely concerned with Italy, in that the carrying vessel was Italian, witnesses as to facts were more readily available in Italy and it would be more convenient to be tried there where third parties reside and process can be issued against them and that according to clause 26 of the Bill of Lading what is not

provided for in the carriage conditions shall be ruled by the code of Maritime Law in force in the Italian Republic.

Finally the plaintiffs have not satisfied me that there is any good reason for me to refuse the application for the stay of these proceedings and I hereby grant a stay on condition that the time bar issue is waived as assurance has already been given by counsel for the applicants/defendants.

Costs in favour of the applicants.

Stay of proceedings granted.