1983 June 15

[A. Loizou, J.]

SONCO CANNING LTD.,

Plaintiff,

v.

VESSEL M/S MINI LINK LYING NOW AT THE NEW HARBOUR OF THE PORT OF LIMASSOL,

Defendants.

(Admiralty Action No. 5/76)

Contract—Carriage of goods by sea—Contract of affreightment—Bill of lading—It is not the contract but excellent evidence of its terms—Open to the shipper to adduce oral evidence to show that the true terms of the contract are not those contained in the bill of lading—Shippers expressly agreeing to accept terms and conditions of bill of lading—On the facts of this case the only evidence of the contract of carriage is to be found in the bill of lading.

In July, 1975 the plaintiff company entered into a contract of affreightment with the defendants through their agents for the carriage of a cargo to Marseilles. It was the contention of the plaintiffs that the contract provided for the carriage of the cargo "without transhipment" and "without delay".

Although plaintiffs claimed to have stressed the urgency of the arrival and the importance of it to the agents of the defendants no reference was made to these matters in a telex which they sent to the agents, on the 11th July, 1975 confirming the shipment. Also after the dispatch of the telex the plaintiffs signed a written application for space agreeing "to accept all terms and conditions of the bill of lading" and although it was inserted therein as conditions of shipment to be "clean on board" and "shipment under deck" the "without transhipment" and "without delay" conditions were not inserted.

When the goods were shipped a bill of lading was issued. It was entitled "Mini Line, Regular Weekly Line, Barcellona -

Marseilles - Genova - Naples - Piraeus - Beirut and vice versa" and it provided "For transhipment (if goods are to be transhipped or forwarded at Port of Discharge) to Destination". Twenty-two conditions were printed at the back, no doubt in very small print but in any event readable. They were the terms and conditions of the bill of lading.

Furthermore the following was stated at its front page: "In ACCEPTING THIS BILL OF LADING, the Shipper, Consignee, Holder hereof, and Owner of the goods, agree to be bound by all of its stipulations, exceptions and conditions, whether written, printed or stamped on the front or back hereof _____"

The defendants discharged the cargo in question in Piraeus and it arrived at Marseilles following its transhipment, with considerable delay. In an action by the plaintiffs for damages the defendants contended that "the contract of carriage of the Plaintiffs' cargo was contained in and/or evidenced solely by the Bill of Lading issued in respect of such cargo which gave the defendants wide powers of transhipment and/or deviation and/or delay since the defendants Ship was trading on a regular line".

Held, that the bill of lading is not the contract, for that has been made before the bill of lading was signed and delivered, but it is excellent evidence of the terms of the contract, and in the hands of an indorsee is the only evidence; that though it is open to the shipper to adduce oral evidence to show that the true terms of the contract are not those contained in the bill of lading, if the plaintiffs relied on an oral agreement there should have been some record somewhere in view of the fact that they thought it necessary to send the telex asking for reservation of space; that moreover when the standard printed form "Application for Shipping Order" was filled in and signed instead of recording therein those vital terms they expressly agreed to accept the terms and conditions of the bill of lading; and that therefore the only evidence of the contract of carriage is to be found in the bill of lading with the terms of which the plaintiffs had agreed to be bound, (this case is distinguished on its facts from that of *The Ardennes* [1951] 1 K.B. 55].

Action dismissed.

Cases referred to:

The Ardennes [1951] 1 K.B. 55; [1950] 2 All E.R. 517;

Routledge v. McKay [1954] 1 All E.R. 855;

Harling v. Eddy [1951] 2 All E.R. 212;

Armour and Co. Ltd. v. Leopold Walford (London) Ltd. 15 Asp. Mar. Law Cas. 415 at p. 416;

Phelps James & Co. v. Hill & Co., 8 *Asp. Mar. Law Cas.* 42.

Admiralty action.

Admiralty action for damages for breach of contract for the carriage of goods by sea.

R. Michaelides, for the plaintiffs.

E. Psillaki (*Mrs.*), for the defendants.

Cur. adv. vult.

A. Loizou J. read the following judgment. The plaintiff company are manufacturers and exporters of canned fruit. Through their efforts they secured the business of a client, namely, Messrs. Roussillon Alimentaire of France, and eventually agreed to supply them 3,500 to 4,000 cartons of seedless grapes in 5 kg. tins at the price of 16.50 dollars per carton C.I.F. Marseilles. These goods were to be delivered by loads of shipments from July to September 1975.

The defendant ship belongs to Elmini Link Inc., it is operated by Mini Line, a regular steamship line who are the operators and/or Managers of her and which Line is represented in Cyprus by Messrs. S. Ch. Jeropoulos & Co. Ltd., who were appointed by them to be this ship's agents during her call at Limassol on or about 21st July 1975.

It is the case for the plaintiff Company that they are entitled to damages for breach of the contract for the carriage of their goods by sea which was concluded between them and Messrs. S. Ch. Jeropoulos & Co. Ltd., as agents for the owners of the defendant ship "MINI LINK", and which contract they claim provided for the carriage of their cargo to Marseilles "without transhipment" and "without delay".

The following is alleged in paragraphs 6 and 7 of the petition:

"6. The Petitioners entered into a contract of affreightment with the defendants through their said agents in respect of their obligations towards the Buyers in question as stated hereinafter, on or about in July, 1975.

The Petitioners notified the defendants that they had a contract to perform by supplying to the Buyers 3,500 to 4,000 cartons by loads as referred to above and explained to them the purpose for which the cargo was required of. And that the contract of affreightment was the first load or shipment and other loads or shipments were to follow until the completion of the contract. And it was further made clear to the defendants that the first load or shipment if unsuccessful would cause damage to the Petitioners and the Buyers and the breaking up of the rest contract and of the future relationship of the Petitioners and the Buyers as well as that it ought to be executed duly. The defendants accepted such load or shipment on such a basis and accordingly and with knowledge that time and delivery were material terms to the obligations of the Petitioners for the first load and for the rest contract and for the business relationship of the Petitioners with the Buyers and for the purpose of which the cargo was required of as set out in this Petition.

7. The Petitioners accordingly shipped in the vessel M/S 'Mini Link' a quantity of 1200 cartons of such seedless grapes in the port of Limassol under Bills of Lading dated 21.7.75. Under the agreement in question the defendants accepted to carry same without transhipment to Marseille for Roussilon Alimentaire and discharge the cargo at the port of Marseille without delay."

It is further alleged in the Petition that in breach of the agreement and the Bills of Lading the cargo was discharged at Piraeus and the defendant vessel never arrived at its destination.

Paragraphs 10, 11 and 12 of the Petition read as follows:

"10. The defendants in breach of the agreement and the Bills of Lading discharged the cargo in question in Piraeus and the vessel never arrived at Marseille. The Petitioners

were in constant communication with their Buyers assuring them to expect the cargo and the vessel as agreed and as scheduled.

11. As the vessel and the cargo were not arriving at Marseille the Buyers were objecting whereupon the Petitioners carried out inquiries and found out that the vessel discharged her cargo at the Port of Piraeus in breach of the agreement and bills of lading and/or without giving notice.

12. The Buyers sustained damage in view of such breach as they could not have co-ordinated their businesses in the delicate trade of cocktails and terminated the agreement for the rest quantities and claimed from the Petitioners damages."

It is the case for the defendants:

"(a) That the contract of carriage of the Plaintiffs' cargo was contained in and/or evidenced solely by the Bill of Lading issued in respect of such cargo which gave the Defendants wide powers of transhipment and/or deviation and/or delay since the Defendant Ship was trading on a regular line. Alternatively that,

(b) Even if, which is denied, an oral agreement supplementing the one contained in the Bill of Lading was concluded between the Plaintiffs and the Defendants' Agents providing for carriage without transhipment and without delay, such agreement was not broken by the Defendants since the delay and transhipment were necessitated by the breakdown of the Defendant Ship on the way from Beirut to Marseille.

Without prejudice to the above denial of liability the Defendants claim, alternatively, that

(c) Even if the Defendants are liable for breach of contract, which is denied the damages claimed by the Plaintiffs have not been proved and/or are too remote and as such not recoverable against the Defendants."

In support of their respective claims evidence has been called. Elias Hadji Lazarou, Office Manager of the plaintiff company, stated that for their shipments they were dealing with Messrs.

Mantovani who had regular shipments to French and Italian ports. They were then approached by Messrs. Jeropoulos who also had regular lines at the time. He assured them that they were to serve them in an excellent way and that the deliveries were to be prompt and punctual as fixed. Upon that they decided to give them some business, that is, the shipment to France. The importance of punctuality was explained to Messrs. Jeropoulos and that the buyers of the said goods wanted them shipped directly from Cyprus to Marseilles. The shipment was to be made in lots, the first one was 1,200 cartons, upon the preparation of which they advised first by telephone and then by telex dated 11th July 1975, confirming that they were shipping with them. The telex, exhibit 1, reads as follows:

> "AS PER TODAY'S TELEPHONE CONVERSATION OF THE WRITER WITH YOUR MR. MUSTAKAS, KINDLY RESERVE FOR SHIPMENT PER 'MINI LINK' ON THE 17TH - 18TH JULY, 1975, 1,200 CTNS. GRAPES OR 29,520 KGS. AT DOLLARS 21.5 PER TON PLUS FIO."

The telex was then confirmed.

According to this witness they specifically saw that their agreement was without any transhipment directly from Cyprus to Marseilles which trip takes usually one week the most. He further stated that the nature of the shipment and the obligations that the plaintiff Company had undertaken towards the French firm were explained by him to Mr. Mustakas of the Jeropoulos Company. Upon the telex being sent, the reply was that they would have an opportunity on the 17th - 18th July and that they were shipping on that ship. They offered shipment on that and they asked the plaintiff Company through the witness, to complete and sign the relevant application for shipping order which they always did. The shipping order, exhibit 5, after referring to the shipper, consignee, destination, who to be notified, that the freight was paid and the various identification marks, has on it the following note: "Clean on board", "Shipment under deck". It goes on to say "Please issue two original Bs/L and 3 copies" and then "I/We agree to accept the terms and conditions of the Bill of Lading". It is dated 16th July 1975, and signed by this witness. It was within the knowledge of the plaintiffs that they were using a Liner Company which was

running regular weekly lines. Although this witness claimed to have stressed the urgency of arrival and the importance of it to Mr. Mustakas of the Jeropoulos firm, yet in the telex (exhibit 1) no reference is made to it and five days later, after the dispatch of exhibit 1, the same witness signed on behalf of the plaintiff Company a written application for space (exhibit 5) agreeing "to accept all terms and conditions of the Bill of Lading", although it was inserted therein as conditions of shipment to be "Clean on board" and "Shipment under deck".

When the goods were shipped a bill of lading (exhibit 2) was issued. It is entitled "Mini Line, Regular Weekly Line, Barcellona - Marseilles - Genova - Naples - Piraeus - Beirut and vice versa" an it provides "For transhipment (if goods are to be transhipped or forwarded at Port of Discharge) to Destination". Twenty-two conditions are printed at the back, no doubt in very small print but in any event readable. They are the terms and conditions of this bill of lading.

Furthermore the following is stated at its front page:

> "IN ACCEPTING THIS BILL OF LADING, the Shipper, Consignee, Holder hereof, and Owner of the goods, agree to be bound by all of its stipulations, exceptions and conditions, whether written, printed or stamped on the front or back hereof, as well as the provisions of the above Carriers published Tariff Rules and Regulations, as fully as if they were all signed by such Shipper, Consignee, Holder or Owner, and it is further agreed that Containers may be stowed on Deck, as per Clause 7.
>
> IN WITNESS WHEREOF, the Master of the said vessel has affirmed to two bills of landing, all of this tenor and date, ONE of which being accomplished, the others to stand void."
>
> There appears the seal of Ch. Jeropoullos and Co., Ltd.

Costas Louca, P.W. 2, the Deputy Managing Director of Sonco Canning Ltd., said that Mr. Dhoros Jeropoullos (D.W. 1) contacted them inquiring whether they would give his firm some shipments. He said that he explained to Mr. Jeropoullos that they had to supply a French Company with grapes in tins of a quantity of about 4,000 cartons and

that delivery had to be in time. He explained the nature of the transactions with the French firm and he said about an opportunity that would leave during the second fortnight of July which would go directly to Marseilles. It was the essence of their agreement that they would ship in time and that in seven or six days the ship would reach Marseilles. He gave instructions to the previous witness to contact the office of Jeropoullos and to proceed with the shipment of the goods.

The bill of landing was issued after the receipt of the goods on board the vessel. This witness stated, however, that he did not read the conditions and terms at the back of the bill of landing because they were unreadable. He said that he had stressed to Mr. Jeropoullos that the particular shipment was a very important one and had to be delivered to the customer on or about the end of July, and that that shipment was expected on that basis. He stressed also that the oral agreement and the bill of landing supplemented each other.

At the end of July, upon enquiries from the French buyers about the fate of the goods this witness inquired with Jeropoullos firm who assured him that the ship would be there on the following day. When the ship did not arrive further inquiries were made. Some days later Jeropoulos firm advised them that the goods had been landed at Piraeus and that he would immediately try to ship them to Marseilles.

It was on the 14th August that the plaintiff Company heard that the goods had been unlaoded at Piraeus and they sent telex (exhibit 3).

After receiving information from Marseilles, Louca telephoned to Doros Jeropoulos (D.W. 1) in Limassol and inquired about the whereabouts of the goods. Finally the goods were shipped on another ship in Piraeus and arrived at their destination one month and seven days after shipment from Limassol. The customers refused to take delivery, there were negotiations for minimizing the loss and eventually they paid U.S. $ 6,000. - in cash agreed to supply free of charge 270 cartons of grapes, which comes to the value of U.S. $ 4,000. - The rate of exchange at the time was 2.42. They offered the grapes at a lower price and they suffered also £6,681.-, the loss for the difference in the price.

It was put to this witness that the plaintiff Company agreed to abide by the terms of the bill of landing of the carrier and that the defendant ship terminated the voyage in Piraeus to which port she had to resort because of a serious engine trouble. Mr. Louca disagreed with this. It was further the case for the defendants that after the break-down of the engine of the ship she had to call at Piraeus as a port of refuge.

The defendants called Mr. Dhoros Jeropoulos (D.W.1.) Managing Director of S. Ch. Jeropoullos and Co., Ltd., who were the agents at the material time, that is in July 1975, of the defendant vessel as well as of other vessels, run by Mini Line, which were calling regularly at Cyprus. According to Mr. Jeropoullos he approached the plaintiff Company in order to secure cargoes from Cyprus to Marseilles as there is very little movement of cargo from East Mediterranean to the West and always the ships go empty, and so any cargo to those destinations is good cargo. He approached Mr. N. Rolandis and offered him a very good freight for his cargo to Marseilles. From U.S. $ 28 to 29 per ton he made an offer U.S. $ 21 per ton and that he had made it known to them that the line was slow because of their special construction in Japan. In fact they are the slowest in the Mediterranean. He denied that they ever gave any assurance about the time of arrival in Marseilles. When they ship cargo they follow the orders of the shippers. However, if they wanted fast delivery or no transhipment they should have demanded such stipulations to be included in the bill of lading, and knowing how particular the plaintiff Company is with all their shipments and how experienced they are. In the beginning of August he said that he was informed that the ship was at Piraeus and that the plaintiffs through Mr. Soteriades asked him to arrange that the cargo would go as quickly as possible to Marseilles and through his efforts he persuaded the shipowners to load the cargo for Marseilles on another ship. He informed the plaintiff Company that the cargo would go to destination as soon as the ship was repaired, and after they pointed out to him that it was a new buyer and it was important to keep him pleased he started pressing the owners to give them information on the sailing. He insisted that he had informed the plaintiff Company that the ship was in trouble and that it was after a few days that they discharged the cargo in Piraeus. He denied that the ship would have gone to Jeddha from the

Eastern Mediterranean as that would mean going without cargo. On that point HadjiLazarou (P.W.1) in his evidence claimed that the explanation given by Mr. Jeropoullos was that the ship had found another job for Jeddha and so the goods for Marseilles which were few were transhipped.

With regard to the engine trouble, Mr. Christos Yelekkides, (D.W.2) a Chief Engineer of Mini Line gave evidence. He said that at midnight of the 28th July he was informed that the defendant ship had engine trouble and on instructions the ship sailed to Marseilles on the 30th. Its condition was such that it could not continue its voyage. The repair would take about a week to be done in Piraeus but they would need a spare-part, called crank pin bearing under-size 0.5 m.m. They tried to make it themselves but as they could not do it they placed an order in Japan, but as they did not have it also in stock they would supply them with it in 10-12 days. They carried out the other repairs and as soon as the spare part arrived they put the bearing in position and completed the repairs on the 22nd. He further stated that it is a sort of damage that can happen at any time, even after a general repair is carried out to a ship. If they had the bearing the engine could have been repaired within a week.

Before dealing with the issues arising in this case, I find it useful to reproduce here two of the clauses of the Bill of Lading (exhibit 2) which are printed at its back in very small print which is not unusual practice in such cases, yet they cannot by any means be said to be unreadable:-

"Clause 3:

The scope of the sea voyage herein contracted for shall include usual or customary or advertised ports of call whether named in this contract or not; also ports in or out of the advertised, geographical, usual route or order, even though in proceeding thereto the vessel may sail beyond the port of discharge named herein or in a direction contrary thereto, or return to the original port, or depart from the direct or customary route and include all canals, straits, and other waters. The vessel may call at any port for the purpose of the current voyage, or of a prior or subsequent voyage. The vessel may omit calling at any port whether scheduled or not, and may call at the same port

more than once, may discharge the goods during the first or subsequent call at the port of discharge; may for matters occurring before or after loading, and either with or without the goods on board, and before or after proceeding towards the port of discharge, adjust compasses, drydock with or without cargo on board, stop for repairs, shift berths, make trial trips or tests, take fuel or stores, remain in port, lie on bottom, aground or at anchor, sail with or without pilots, tow and be towed, and save or attempt to save life or property, and all of the foregoing are included in the contract voyage. The vessel may carry contraband, explosives, munitions, war-like stores, hazardous cargo, and sail armed or unarmed, and with or without convoy. The Carrier's sailing schedules are subject to change without notice, both as to sailing date and date of arrival "

"Clause 13:

Whenever the Carrier or Master may deem it advisable, or in any case where goods are received for shipment at an inland place or at a port where the ship will not call, or where the goods are destined for port(s) or place(s) at which the ship will not call, and particularly, but not exclusively, where the Place of Receipt for Shipment and the Port of Loading or where the Port of Discharge from ship and Destination of the goods named on the face hereof are not the same, the Carrier may, without Notice, forward the whole or any part of the shipment before or after loading at the original Port of Shipment, or any other place or places even though outside the scope of the voyage or the route to or beyond the Port of Discharge or the destination of the goods, by water, by land or by air or by any combination thereof, whether operated by the Carrier or others and whether departing or arriving or scheduled to depart or arrive before or after the ship expected to be used for the transportation of the shipment. The Carrier may delay forwarding awaiting a vessel or conveyance in its own service or with which it has established connections. In all cases where the shipment is delivered to enother carrier, or to a Lighter, Port Authority, Warehouseman, or other Bailee, for trans-shipment, the liability of this Carrier shall absolutely cease when the goods are out of its exclusive possession and shall not resume until the goods again come

into its exclusive possession; and the responsibility of this Carrier during any such period shall be that of an agent of the Shipper and/or Consignee, and this Carrier shall be without any other responsibility whatsoever.

The carriage by any trans-shipping or on-carrier and all trans-shipment or forwarding shall be subject to all the terms whatsoever in the regular form of bill of lading, consignment note, contract or other shipping document used at the time by such carrier, whether issued for the container(s) and/or goods or not, and even though such terms and conditions may be less favourable to the Shipper or Consignee than the terms and conditions of this bill of lading and may contain more stringent requirements as to Notice of Claim or commencement of suit and may exempt the on-carrier from the place where the goods are received for shipment to the Port of Loading, or for on-carriage from the Port of Discharge from Ship to destination, over the rate prevailing at the time of the engagement evidenced by this bill of lading, which latter rate has been used in computing the freight charges on this shipment, shall be a charge and lien upon the goods."

As regards the terms of a bill of lading the position, by reference also to decided cases is summed up in Scrutton on Charterparties 18th edition at p. 53 Article 29 as follows:

"The bill of lading is not the contract, for that has been made before the bill of lading was signed and delivered, but it is excellent evidence of the terms of the contract, and in the hands of an indorsee is the only evidence. But it is open to the shipper to adduce oral evidence to show that the true terms of the contract are not those contained in the bill of lading, but are to be gathered from the mate's receipt, shipping-cards, placards, handbills announcing the sailing of the ship, advice-notes, freight-notes, or undertakings or warranties by the broker, or other agent of the carrier."

It then refers to the case *The Ardennes* [1951] 1 K.B. p. 55 reported also in [1950] 2 All E.R. 517. In that case its facts appear in the judgment of Lord Goddard, C.J. and are summed up as follows:

"On Nov. 22, 1947, in reliance on a promise made by the shipowner's agent that the ship would proceed direct to London, and, therefore, in the belief that she would arrive there by Nov. 30, at the latest, a shipper in Cartagena, Spain, shipped three thousand cases of mandarines which were intended for sale in the London market. The shipper was anxious that the goods should arrive in England by Nov. 30, as the import duty on them would be considerably increased on Dec. 1, and also because the sooner they arrived the better prices they would fetch. These facts were known to all persons handling this class of merchandise, and, when making the contract, the shipper impressed on the shipowner's agent the importance of the ship arriving in London by Nov. 30. The bill of lading contained a clause that the shipowner was to be at liberty to carry the goods to their port of destination 'proceeding by any route, and whether directly or indirectly to such port, and in so doing to carry the goods beyond their port of destination.' Instead of proceeding direct to London from Cartagena, the ship went first to Antwerp, where she arrived on Nov. 30, and she did not arrive in London until Dec. 4, with the result that the shipper had to pay the higher import duty and obtained an appreciably lower price for the goods than the price which he would have realised if he had been able to sell them earlier. In an action by the shipper claiming damages against the shipowner for breach of contract, the shipowner relied inter alia on the clause in the bill of lading and contended that evidence of any other contract or promise was inadmissible."

Lord Goddard decided the case as follows, and at pp. 519-520 he says:-

"It is, I think, well settled that a bill of lading is not, in itself, the contract between the shipowner and the shipper of goods, though it has been said to be excellent evidence of its terms: see *Sewell v. Burdick* [1884], 10 App. Cas. 74; per LORD BRAMWELL (10 App. Cas. 105), and *Crooks v. Allan* [1879], 5 Q.B.D. 38; the contract has come into existence before the bill of lading is signed. The bill of lading is signed by one party only and handed by him to the shipper, usually after the goods have been put on board.

No doubt, if the shipper finds that it contains terms with which he is not content or that it does not contain some term for which he has stipulated, he might, if there were time, demand his goods back, but he is not, in my opinion, thereby prevented from giving evidence that there was a contract which was made before the bill of lading was signed, and that it was different from that which is found in the document or contained some additional term. He is not a party to the preparation of the bill of lading, nor does he sign it. It is unnecessary to cite further authority than the two cases which I have already mentioned for the proposition that the bill of lading is not itself the contract, and, therefore, in my opinion, evidence as to the true contract is admissible."

In respect of the facts of our case, which are claimed to constitute the contract of affreightment between the plaintiff Company and the defendants, it is worth pointing out that independently of the allegations made that there had been oral exchanges between the various witnesses, yet in the telex (exhibit 1) sent on behalf of plaintiffs by witness HadjiLazarou, P.W.1, requesting reservation for shipment, no reference is made to the two most important, according to the plaintiffs' witnesses terms which had orally been agreed as they allege, namely that there should be "no delay" and "no transhipment". Moreover when this witness filled in and signed what is entitled an "Application for Shipping Order" (exhibit 5), on the 16th July 1975, that is five days after the telex was sent, there were added thereon in ink, apart from the other particulars the words, "CLEAN ON BOARD" and "SHIPMENT UNDER DECK" and they did not think it essential though the plaintiffs appear to be experienced and particular in recording their transactions, to record therein the most vital according to them, condition of the contract of affreightment, regarding the delay and the transhipment. On the contrary, it is clearly recorded on this document and it is to my mind a vital term that "I/We, agree to accept the terms and conditions of the bill of lading."

If the plaintiffs relied on an oral agreement there should have been some record somewhere in view of the fact that they thought it necessary, after the telephone conversation with Mr. Moustakas, to send the telex, exhibit 1, asking for a reservation of space for shipment of their goods. Moreover when the standard

printed "Application for Shipping Order" which is addressed to S. Ch. Jeropoulos and Co., Ltd., was filled in and signed instead of recording therein those vital terms, they expressly agreed to accept the terms and conditions of the Bill of Lading. On these facts and on these documents, coupled with the bill of lading issued upon receipt of the goods on board the ship in question, I cannot but distinguish this case on its facts from that of the *Ardennes* (supra) though agreeing fully with the legal principles expressed therein on the facts as accepted by the Court in that case.

In any event, relevant in this respect is the extent that oral statements made, followed by a reduction of the terms in writing, can form a part of the concluded contract.

In Cheshire and Fifoots, Law of Contract, 9th edition it has been stated that if oral statements were so followed, the Court must decide whether it was the intention of the parties that the contract should be comprised wholly in their document or whether the contract was to be partly written and partly oral.

The exclusion of an oral statement from the document may suggest that it was not intended to be a contractual term.

In *Routledge v. McKay* [1954] 1 All E.R. 855, such a construction seems to find support. But in other cases the Courts have not shrank from reading together an earlier oral statement and a later document so as to unite them in a single comprehensive contract. In this respect see *Harling v. Eddy* [1951] 2 All E.R. 212.

On the above authorities and having duly weighed the evidence adduced, I have come to the conclusion that the only evidence of the contract of carriage in question is to be found in the bill of lading issued for the plaintiffs' cargo, and with the terms of which the plaintiffs had agreed to be bound, as stated in exhibit 5.

Its legal significance cannot be underestimated. A similar situation is to be found in the case of *Armour and Co., Limited v. Leopold Walford (London) Ltd.*, Vol. 15, Aspinall's Reports of Maritime Law Cases at p. 415, where at p. 416 McCardie J., said the following:

"The bargain may be collected from various documents or other sources: (see Carver on Carriage by Sea (6th edit., s. 53) and Scrutton on Charter-parties (art. 8)).

Whatever the prior express bargain has been, a shipper is free to accept any bills of lading he chooses. If, therefore, he has chosen to receive without protest a bill of lading in a certain form he should ordinarily be bound by it, for as Mr. Carver well observes in sect. 56 of his book: 'Where that has been done it is difficult to suppose that the document can be treated as not being what it seems to be.' That learned author proceeds: 'The practice of looking to it as a contract may be said to be uniform and, indeed, has been adopted by the Legislature (Bills of Lading Act 1855); and the scarcity of authority is in truth a strong confirmation of the view that it is the contract; for it shows that in practice the point has not been considered open to question.'

Here the plaintiffs, I am satisfied, actually accepted the bill of lading in question as the bargain for carriage. From whatever point of view the case is regarded, be it on the principle of *Richardson Spence, and Co. v. Rowntree* (7 Asp. Mar. Law Cas. 482; 70 L. T. Rep. 817; [1894] A.C. 217) or on the point that the bill accorded with the provisions of the booking-slip or the ground that the plaintiffs actually accepted the bill of lading, they are bound by clause 11.

The print of clause 11 is small, and in this connection *Crooks and Co. v. Allan* (sup.) *Roe v. Naylor Limited* (116 L. T. Rep. 542; [1917] 1 K.B. 712), and *Gibaud v. Great Eastern Railway Company* (125 L.T. Rep. 76, [1921] 2 K.B. 426) were cited before me. Clause 11, however, is in clear print. It is as plain as the other clauses, and it takes its due place in the sequence of clauses. It is perfectly legible. The cases just cited do not therefore require consideration."

No doubt the plaintiffs in our case also actually accepted to use the words of McCardie J., above referred to, the Bill of Lading in question exhibit 2, as the bargain for carriage when viewed in conjunction with and as it accorded with the provisions of "The Application for Shipping Order", exhibit 5, and after dismissing anything said to the contrary.

Counsel for the defendants submitted in the alternative (a situation that could have arisen had I concluded that the contract of carriage was not evidenced solely by she Bill of Lading but that the defendants contracted to carry the cargo to Marseilles without transhipment) - that this Court still could not fail to reach the conclusion that the transhipment and/or delay were justified as necessitated by the engine breakdown suffered by the defendant ship at midsea. This she based on the really uncontradicted evidence of Christos Yelekkides, D.W.2, Chief Engineer of the ship-owners, who stated that repairs to the vessel were not completed before the 22nd August, and this because a spare part which could not be secured otherwise had to be brought from Japan, and who also spoke of the necessity - reasonable in my view in the circumstances - of the vessel calling at Piraeus, which was not questioned or attacked.

In support of the aforesaid proposition reference has been made to the case of *Phelps James & Co. v. Hill and Co.*, 8 Asp. Mar. Law Cas. 42, in which the question of reasonable necessity for deviation was examined.

I need not, however, deal with this matter as anything I say will be obiter in view of my conclusions drawn on the evidence adduced and as accepted by me in relation to the first point raised in these proceedings. For the same reasons I need not assess the damages as I would normally have done in spite of the result of this case for use as the authorities have laid down by an Appellate Court in case I am found to be wrong on the conclusions reached by me on the merits of the case.

For all the above reasons this case is dismissed with costs.

Action dismissed with costs.