GREGORIS NICOLAOU YIANNAKOURI AND ANOTHER (No. 3),

Plaintiffs,

v.

CYPRUS SEA CRUISES (LIMASSOL) LTD.,

Defendants.

(*Admiralty Action No.* 4/65)

Admiralty—Carriage of goods by sea—Goods lost or damaged on the voyage—Defendants not the shipowners—Liable as common carriers—Defendants liable for the breach of their common law duty as carriers—Even if there was no special common law duty, sufficient evidence to support finding that defendants are common carriers, and that as such they have failed to insure the safe delivery of the goods.

Contract—Carriage of goods by sea—Goods lost or damaged on the voyage—Defendants not the shipowners—Nature of liability—Existence of contract and terms—Unqualified oral contract—Defendants contracted personally and not as agents—Personally liable as common carriers—Contract Law, Cap. 149, *section* 190 (1) (2) (*b*) *and general principles applicable to principal and agent contracts.*

Bailment—Carriage of goods by sea—Goods lost or damaged on the voyage—Defendants not the shipowners—Defendants common carriers and not ordinary bailees—Liable as common carriers—Even if defendants were ordinary bailees ample evidence to support finding that they failed to take that degree of care which would be shown by a reasonable man in the circumstances.

Evidence—Estoppel—Carriage of goods by sea—Value of goods lost or damaged on voyage—Non-declaration of value of goods to defendants by plaintiffs—Plaintiffs not bound to declare because they were not asked—Plaintiffs' declaration to the Customs as to the value of the goods—Not an estoppel to their giving evidence that goods have a higher value in a case against the carriers.

Damages—Carriage of goods by sea—Loss and damage to goods on voyage—Assessment of damages.

By this action, the plaintiffs claim damages for loss to their goods comprised of their household and personal effects, including their books, packed in six cases and shipped on

board the s.s. " Kypros " for carriage from Limassol to Piraeus and for loss of time and expenses incurred by them in clearing the said goods.

The defendants denied that they were the owners of the s.s. "Kypros" and that they were common carriers; they also denied that they undertook to carry the plaintiffs' goods and they alleged that the plaintiffs accepted to have their goods placed through the defendants on board the s.s." Kypros " for carriage to Piraeus, excluding any liability for any loss or damage whilst on board the ship or in the discharge of the cargo. Also the defendants denied that they or their servants or agents were negligent and they alleged that in any event they were not responsible for any negligence or lack of care exhibited by the s.s. " Kypros " or her crew in the course of the carriage of the goods or their discharge at Piraeus ; that none of the plaintiffs' cases were damaged during the voyage and that no loss or damage was caused to the plaintiffs' goods.

In the present case the following questions fall for determination:

1. Were the defendants the owners of the s.s. " Kypros "? Even if they were not, are they liable for any loss or damage in the circumstances of the present case?
2. Were the defendants common carriers or ordinary bailees?
3. Was a contract concluded between the parties? If yes, (*a*) what were its terms and (*b*) was the defendants' liability for any loss or damage to the goods excluded?
4. Were the plaintiffs' goods damaged on the way and before delivery to them at Piraeus?
5. Did the defendants break any of their contractual, common law or statutory duties?
6. If yes, damages.

Held, (1) on the evidence I am satisfied that the defendants are not the owners of the s.s. " Kypros ", but I am of the view that this question is governed by section 190 of our Contract Law Cap. 149 and the general principles stated below.

(2) Whether an agent is to be taken to have contracted personally, or merely on behalf of the principal, depends on what appears to have been the intention of the parties, to be deduced from the nature and terms of the particular contract and the surrounding circumstances. In the case of oral contracts the question is purely one of fact: See *Pollock and Mulla* on Indian Contract and Specific Relief Acts, 8th Edition, 257 and 270.

(3) Shipowners are not strictly speaking common carriers. but they are under the same kind of liability as common carriers unless that liability is cut down by a special contract. In this case I hold that the defendants were under the same kind of liability as common carriers.

(4) (*a*) The question is what was the contract between the parties? The contract was an oral one. No document was signed or exchanged between the parties until the contract was completed. The receipt for the freight of £6, which was made out by the cashier of the defendant company and handed to Lamaris after he paid the freight, cannot be regarded as the contract or as containing the terms of the contract ; but it confirms the evidence of Lamaris that the sum of £6 was " cargo rate for 6 packages shipped per s.s. " Kypros " on 20.8.1964 ". On the evidence of Lamaris, I have found as a fact that no liability was excluded, either orally or in writing, by the defendant company.

(*b*) The oral contract was to the effect that the defendant company undertook to put the goods of the plaintiffs on the s.s. " Kypros " to be carried and delivered to the second plaintiff at Piraeus ; and they gave instructions to the purser of the ship to deliver the goods to the second plaintiff. They undertook to carry the goods for a reasonable reward, that is, on payment of the freight of £6. In fact, they received the plaintiffs' goods, they placed them on the s.s. " Kypros" and they received payment of the freight of £6 on the 20th August, 1964. In these circumstances the oral contract between the parties stands unqualified and the defendants are liable as common carriers as the common law implies a contract between a sea carrier and a shipper (in default of other agreement) to the effect that a carrier will be entitled to a reasonable reward and that he is an insurer of the safe delivery of the goods. If they are damaged on the way he is liable.

(5) On the facts as found by me and the law I hold that the plaintiffs' goods were damaged on the voyage and before delivery to the consignee (the second plaintiff).

(6) (*a*) As I have found that the plaintiffs' goods were damaged on the voyage and before delivery, defendants are liable for the breach of their common law duty.

(*b*) Even if there was no special common law duty on shipowners for the carriage of goods by sea, on the evidence of Lamaris, which I have accepted, I would have no hesitation in

finding that the defendant company are common carriers, and that as such they have failed to insure the safe delivery of the goods.

(*c*) Finally, even if the defendants were ordinary bailees, there is ample evidence to support a finding that they failed to take that degree of care which would be shown by a reasonable man in the circumstances, that is, they failed to protect the goods from getting wet with sea water on the voyage and they failed to store them in a dry place on the ship.

(7) In the present case on the material before me, giving the best consideration I can, I am of opinion that the plaintiffs should be compensated by the payment of 50% of the original value of the used wearing apparel and 75% of the original value of the used books. I am giving a higher percentage value to the books at the time of shipping, as I am of the view that the life of a book is longer than that of a wearing apparel.

(*a*) The net result is that I assess the sum of £284 as loss or damage to the plaintiffs' goods and £41 for loss of time, travelling, etc., that is to say, £325 in all.

(*b*) There will, therefore, be judgment for the plaintiffs in the sum of £325 and costs.

Judgment and order as to costs accordingly.

Cases referred to :

Parker v. *Winlow* (1857) 7 E. & B. 942 ;

Long v. *Miller* (1879) 4 C.P.D. 450 C.A.;

Williamson v. *Barton* (1862) 7 H. & N. 899 ;

Baxter's Leather Company v. *Royal Mail Steam Packet Company* (1908) 2 K.B. 626, C.A. at p. 630 ;

Paterson Steamship v. *Canadian Wheat* (1934) A.C. 538 at p. 544 ;

Beaumont-Thomas v. *Blue Star Line* (1939) 3 All E.R. 127 at p. 130 ;

Chapman v. *Great Western Rail Co.* (1880) 5 Q.B.D. 278 ;

Mitchell v. *Lancashire and Yorkshire Rail Co.* (1835) L.R. 10 Q.B. 256 ;

Bradshaw v. *Irish North Western Rail Co.* (1873) I.R. 7 C.L. 252;

Nugent v. *Smith* (1876) 1 C.P.D. 423, C.A.;

M'Cance v. *London and North Western Rail Co.* (1864) 3 H. & C. 343, Ex. Ch.;

Riley v. *Horne* (1828) 5 Bing 217 ;

Admiralty Action.

Admiralty action instituted by plaintiffs against defendants claiming (*a*) the sum of £479.500 mils for loss or damage to their goods and (*b*) the sum of £100 by way of damages for loss of time and expenses incurred by them in clearing the said goods.

Chr. Mitsides, for the plaintiffs.

G. Polyviou, for the defendants.

Cur. adv. vult.

The facts of the case are sufficiently stated in the following judgment delivered by :

JOSEPHIDES, J.: The plaintiffs claim—

(*a*) the sum of £479.500 mils for loss or damage to their goods shipped on board the s.s. " Kypros " for carriage from Limassol to Piraeus ; and

(*b*) the sum of £100 by way of damages for loss of time and expenses incurred by them in clearing the said goods.

The plaintiffs' goods consisted of household and personal effects and books packed in six cases, namely, three wooden and three cardboard cases.

By their statement of claim the plaintiffs allege that the defendants, who are a limited company registered in Cyprus, are common carriers and/or a shipping company plying their trade, *inter alia*, for carriage of goods from Cyprus to ports in Greece, including Piraeus, for reward ; that they were at all material times the owners of the s.s. " Kypros " ; that on or about the 19th August, 1964, the plaintiffs delivered to the defendants and the defendants accepted at Limassol the articles described in Schedule A (annexed to the statement of claim) for carriage to Piraeus, and that the defendants were paid for this purpose the sum of £6. It was further alleged that the defendants were under an obligation as common carriers and/or it was impliedly agreed and/or it was their duty as bailees and/or agents of the plaintiffs to carry the aforesaid cargo safely to its destination ; that the said cargo arrived at Piraeus on the s.s. " Kypros " on the 22nd August, 1964, badly damaged by water and/or sea water and by reason of bad storage during the voyage. Finally, it was alleged that the cargo was damaged through the negli-

gence of the defendants and/or their agents and/or servants during the loading and carriage thereof, and particulars of the negligence and damage were given in the statement of claim.

The defendants denied that they were the owners of the s.s. " Kypros " and alleged that the ship in question was owned by " Kypros Compagnia Naviera sa Panama ", a company registered outside Cyprus, and that they were the handlers of the said ship when it called at Cyprus ports and its local agents in Cyprus. The defendants further denied that they were common carriers nor that they undertook to carry the plaintiffs' goods, and they alleged that the plaintiffs accepted to have their cases placed through the defendants on board the s.s. " Kypros " for carriage to Piraeus, excluding any liability for any loss or damage whilst on board the ship or in the discharge of the cargo. Finally, the defendants denied that they or their servants or agents were negligent and they alleged that in any event they were not responsible for any negligence or lack of care exhibited by the s.s. " Kypros " or her crew in the course of the carriage of the goods or their discharge at Piraeus ; that none of the plaintiffs' cases were damaged during the voyage and that no loss or damage was caused to the plaintiffs' goods.

It was common ground that no bill of lading or other document was executed in respect of the carriage of the plaintiffs' goods.

On the pleadings the following questions fall for determination :

1. Were the defendants the owners of the s.s. " Kypros "? Even if they were not, are they liable for any loss or damage in the circumstances of the present case ?

2. Were the defendants common carriers or ordinary bailees ?

3. Was a contract concluded between the parties ? If yes—

   (*a*) What were its terms ; and

   (*b*) was defendants' liability for any loss or damage to the cargo excluded ?

4. Were the plaintiffs' goods damaged on the way and before their delivery at Piraeus ?

5. Did the defendants break any of their contractual, common law or statutory duties ?

6. If yes, damages.

I shall first deal with the *facts* of this case.

The two plaintiffs gave evidence at the hearing of the case and they also called Mr. Costas Lamaris, who was the forwarding agent who arranged with the defendant company the shipping of the plaintiffs' goods on the s.s. " Kypros ". The defendant company called two witnesses, namely, the manager of their office at Limassol and their traffic manager with whom Mr. C. Lamaris arranged the shipping of the plaintiffs' goods. It is significant that Mr. Lamaris was summoned by both sides but, eventually, he gave evidence as the plaintiffs' witness.

The plaintiffs are husband and wife and they come from Greece. They have both been teachers of chemistry at the Greek Schools (Gymnasia) in Limassol. In August, 1964, they decided to send their household and personal effects, including their books, to Greece and, while the wife (the second plaintiff) was spending her holidays in Greece with their five-year old child, the husband (first plaintiff) had all their effects packed in six cases and, according to his evidence, on the 19th of August, he approached Mr. C. Lamaris in Limassol, who is a forwarding and clearing agent and chandler, and asked him to make arrangements to have the cases sent to his wife in Piraeus. Lamaris did make arrangements with the defendants and eventually the six cases were on the 20th August, 1964, loaded on the s.s. " Kypros ". After the loading the first plaintiff went to the defendants' office and asked for a bill of lading but he was not given one and was told by the defendants' traffic manager, Mr. Christos Charalambides, that they had delivered the cargo-receipts to the purser of the ship to be delivered at Piraeus, and that the goods would be delivered to the wife, the second plaintiff. The first plaintiff further stated that he was supplied with a card to enable his wife to take delivery at Piraeus. No oral or written agreement was concluded between the plaintiffs and the defendant company. All the negotiations were made between the forwarding agent Lamaris and Charalambides of the defendant company. Lamaris delivered to the first plaintiff, after the loading of the goods on the 20th August, 1964, a receipt for £6 which was issued by the defendant company. This was produced

as exhibit 2 in the case and, in fact, it is the only document concerning the carriage of the goods. This receipt reads as follows :

" CYPRUS SEA CRUISES (LIMASSOL) LTD.
SP. ARAOUZOU 111-113
TEL. 3124-3125—P.O.B. 555
LIMASSOL—CYPRUS

No. 0089

RECEIPT £6

Received from Mr. Costas Lamaris for Zoe Yiannakouri

The sum of Pounds six only

Mils——

Being cargo rate for 6 packages shipped per s.s. " KYPROS " on 20/8/1964.

Limassol the 20/8/1964

CASHIER

(Sgd.) Chr. Calogirou."

It will be noticed that the receipt issued by the defendants states that they received the sum of £6 " being cargo rate for 6 packages shipped per s.s. ' Kypros ' on 20/8/1964". The receipt bears the signature of the defendants' cashier and nowhere does it appear in the receipt that the defendants received the money, or were acting, as agents of the s.s. " Kypros ", or indeed of any other principal.

The first plaintiff frankly admitted in his evidence that he did not know who were the onwers of the s.s. " Kypros ", nor did he know the nature of the defendants' business. He only knew that Papadopoullos was the manager of the defendants' office. It was Lamaris who arranged everything for the plaintiffs. But the first plaintiff emphatically denied that the defendants' employees excluded any liability for any loss or damage to his goods while being carried on the s.s. " Kypros ". On the contrary, he stated that the defendants' manager, on one occasion when he (the first plaintiff) had gone to complain that his goods had got lost on the voyage, told him that the defendants would indemnify him if any case got lost.

Costas Lamaris, who is now the managing director of the Lavar Shipping Company Ltd., was in August, 1964, and for

many years before then, a forwarding and clearing agent as well as chandler of ships. In evidence he stated that in August, 1964, the first plaintiff requested him to find a ship for him to send his goods to Piraeus. And he, thereupon, got in touch with the defendant company and arranged for the plaintiffs' goods to be loaded on the s.s. " Kypros " on the 20th August, 1964. The six cases were loaded on board the ship and Lamaris paid the sum of £6 as freight to the defendants who issued to him the receipt, exhibit 2, which he eventually handed to the first plaintiff. He spoke to Christakis Charalambides, of the defendants' office, and asked him to give him a bill of lading but Charalambides informed him that they did not possess any forms at the time. This is the relevant extract from the evidence of Lamaris in the examination-in-chief :

" I spoke to Mr. Christakis Charalambides an employee of the defendant company and asked him to give me bills of lading but he informed me that they had no available forms for bills of lading. I asked them to issue to me cargo receipts and the reply of the defendant company was that such cargo receipts were sent on the ship and told us not to worry because the articles will be delivered at Piraeus. Mr. Christakis Charalambides informed me that all the documents will be sent with the ship and there will be no difficulty in getting delivery of the articles. As I considered that not being issued with any receipt was an unorthodox way of doing things I discussed the matter with the employee of the defendant company Mr. Charalambides and he said that ' we have no available forms of bills of lading and in the meantime, in future, we may have ; this is the practice followed with the s.s. ' Kypros '."

In cross-examination Lamaris said :

" I spoke to Christakis Charalambides and told him that plaintiff No. 1 has 6 boxes which he wants to send to Piraeus and I enquired whether we could load them on board the s.s. ' Kypros ' which is their only ship. I agree that I applied for shipping space on s.s. ' Kypros'. Mr. Christakis did not tell me that they are not carriers. He told me that they did not have bills of lading. As a shipping agent on many occasions I did this kind of work and Mr. Christakis told me that they did not have bills of lading, and for these goods they did not issue bills of lading. I agree that the defendant company secured shipping space for me in order to load the articles in question. In fact I loaded the articles. I

paid the amount of £6 as freight after I was informed that the articles were loaded and they were received in good order on the ship."

And further down :

"When Mr. Christakis informed me that they had no bills of lading and cargo receipts he did not mention to me that because we do not have these documents we do not take any responsibility whatsoever. I advised plaintiff No. 1 to insure the goods in question. The reason for advising plaintiff No. 1 to insure the goods is because it is the usual and normal thing to do. The loading on the lighters was done by my men. The loading from the lighters on the boat was done by the men of the ship."

On the question whether the defendants were acting as principals or as agents of the Panama Company, Lamaris said in examination-in-chief :

"I found space on the ship 'Kypros' which belongs to the defendant company. I found it myself. I approached the office of the defendant company and I arranged that the goods be loaded on board the ship 'Kypros' ..... I say that the s.s. 'Kypros' and the office of the defendant company are one and the same and they are new offices of about 2 or 3 years' standing."

In cross-examination he said :

"I was with the impression that the defendant company were the owners of the steamship 'Kypros' and the handlers. I approached the defendant company because I considered them as the handlers of s.s. 'Kypros'. In fact I wished to secure shipping space on s.s. 'Kypros' from the defendant company. The carriage of the goods would be done by s.s. 'Kypros' through their handlers."

And further down :

"During the contacts I had with the defendant company I was with the impression that the s.s. 'Kypros' belonged to them and that they were the handlers of s.s. 'Kypros' and until this day I am with the impression that it belongs to them and that they are its handlers."

Before dealing with the evidence of the second plaintiff, which concerns the delivery of the goods at Piraeus and the state in which they were delivered, I shall deal with the

evidence of the two witnesses called by the defendant company which gives their version of the circumstances under which the plaintiffs' cases were shipped on s.s. " Kypros " on the 20th Augsut, 1964. The first witness, Athanassios Papadopoullos, who is the manager of the defendant company in Limassol, stated that the company was registered in June, 1964, and that they commenced business in July, 1964. He further stated that the defendant company are not the owners of s.s. " Kypros " and that the owners of the said ship are " Kypros Compagnia Naviera sa Panama " which is registered in Panama. The defendants represent the s.s. " Kypros " in Cyprus and do not represent any other ship. In August, 1964, they were undertaking the carrying of passengers only. The Panama company owns no other ship. The controlling interest in the defendant company as well as in the Panama company is owned by the Haji Ioannou Brothers.

The witness Christakis Charalambides, traffic manager of the defendant company, was the servant of this company with whom Lamaris made the arrangement whereby the plaintiffs' six cases were eventually loaded on the s.s. " Kypros " on the 20th August, 1964. He stated in evidence that Lamaris contacted him on the telephone and said that he wanted to send six cases of the plaintiffs to Greece. This witness said that at first he was not willing to undertake to send these goods on the s.s. " Kypros " as they did not send unaccompanied goods and they had no bills of lading or cargo-receipt forms. As Lamaris insisted, this witness said that he would accept the cargo but that they would not undertake any responsibility for the safe delivery of the goods and he promised to secure shipping space for Lamaris on the s.s. " Kypros ". Lamaris mentioned on the telephone that the cases contained household and personal effects but no mention of their value was made nor of the freight payable. This conversation took place in the morning. Subsequently Lamaris either gave to this witness or sent him the consignee's (second plaintiff's) address in Piraeus, which address the witness handed to the purser of the ship. Lamaris went to the defendants' office in the afternoon to pay. As witness Charalambides had not seen the cases he asked Lamaris to say what would be a reasonable amount to pay as freight and Lamaris said £6 which the witness accepted. There and then this sum was paid to the defendant company by Lamaris and the receipt, exhibit 2, was issued by the cashier and handed to Lamaris. In the afternoon of the same day, according to Charalambides, the first plaintiff went to the defendants' office and asked for a bill of lading

or other documents. The witness replied that they did not have any forms and that they accepted the goods because Lamaris had requested them ; and he added that he had given the consignee's address to the purser of the ship to attend to the matter. In cross-examination Charalambides stated that at the time they did not have any bills of lading or cargo-receipt forms and that Lamaris did not ask for such forms. It was only the first plaintiff who asked to be supplied with these forms.

The two main witnesses in this action, on whose evidence the case turns, are Lamaris and Charalambides. Having watched their demeanour in the witness box and the way in which they answered the questions put to them, between the two I have no hesitation in accepting fully the evidence of Lamaris as the true version of what actually took place between him (Lamaris), as the agent of the plaintiffs, and Charalambides, the traffic manager of the defendant company. On this basis, where there is conflict between the evidence of Lamaris and that of Charalambides I accept as a fact the evidence of Lamaris. Likewise, where there is conflict between the evidence of the first plaintiff and that of Charalambides I accept as a fact the evidence of the first plaintiff.

I shall now proceed to make my findings with regard to the condition of the goods at the time of delivery to the second plaintiff in Piraeus.

The s.s. " Kypros " left Cyprus on the 20th August, 1964, and arrived at Piraeus on the 22nd August, 1964. The only evidence as to the state of the goods at the time of delivery is that of the second plaintiff, which I *accept* on this point. According to this witness she went to the office of the defendants' agents in Piraeus and enquired whether the goods had arrived. They informed her that they had arrived, that they were at the Customs in Piraeus and that she could take delivery of them. But on going to the Customs she was refused delivery without a delivery order from the shipping agents. She went back to the office of the shipping agents in Piraeus, some two kilometres away, and told them about it. They asked her to produce a bill of lading or cargo-receipt which she did not possess. Then they informed her that she could take delivery of the goods, without documents, at the Customs Warehouse No. 2 in Piraeus. She proceeded to that warehouse but she was told that the goods were not there. She further stated that she called on more than 30 times at the Customs at Piraeus to be able eventually to take

delivery of the five cases on the 21st September, 1964, and of the sixth case soon after. She looked for three or four days in the Customs Warehouse but could not find her cases. Eventually she found the five cases under a Customs shed, and the sixth case she traced later in a warehouse. On tracing the five cases and seeing that three of them were wet, from the bottom up to one-half of the height, she caused a notice to be sent to the defendants' agents in Piraeus on the 21st September, 1964 (exhibit 1, blue 2), (*a*) informing them that five cases were found under a shed and that three of them were wet and had a " smell of decay ", and (*b*) calling on them to appear on the following day (22nd September, 1964) at 8 a.m. at the Central Customs House in Piraeus before the Customs Controller to ascertain the number of cases and the state of their contents, and to have delivery of the cases effected. This notice is headed " Extra-judicial Notification with Protest and Reservation ".

The defendants' agents failed to appear on the 22nd September as notified, but the examination before the Customs Authorities took place in the presence of the second plaintiff and in the absence of the defendants' agents. It was found that—

(*a*) two of the cases were intact and there is no claim in respect of them ;

(*b*) the other three cases (two wooden and one cardboard) were wet from the bottom up to one-half externally.

On opening these three cases it was found that the porcelain plate set was undamaged but the " PYE " stereophonic record-player (" Black Box " model), the clothing and books, described in Schedule " A " to the claim, were wet by sea water. All the books were decayed. They had disintegrated and there was a bad smell from decay. The clothing in Schedule " A " was likewise completely damaged and became absolutely useless. As for the " PYE " record-player, the ply-wood top was warped and it was mouldy and the legs were rusty. All the books and clothing described in schedule " A " were eventually thrown away. As regards the record-player the second plaintiff stated that the customs officers estimated that it had been damaged by 75%, but she was of the view that it has no value at all. She did not try to play any records on it, and as she was in a hurry to leave for Cyprus she did not have time to call in an expert to advise her. She has not returned to Greece since then.

There is no doubt that the damaged articles were wet all over with sea water because the second plaintiff, as a qualified analyst, made an analysis on the spot which showed that the articles were soaked in sea water. They remained wet for about 20 days and that is why they decayed.

The sixth case, which was found in one of the Customs warehouses after the 22nd September, 1964, was intact. The Customs shed under which the five cases were found was some 500 metres away from the sea in the harbour. At a later stage of this judgment I shall deal with the evidence of the second plaintiff in respect of her claim for £100 for loss of time and expenses incurred in clearing the goods.

Having made these *findings of fact*, I now proceed to consider the questions which fall to be determined in this case.

Question (1): Were the defendants the owners of the s.s. "Kypros"? Even if they were not, are they liable for any loss or damage in the circumstances of the present case?

On the evidence I am satisfied that the defendants are not the owners of the s.s. "Kypros", but I am of the view that this question is governed by section 190 of our Contract Law, Cap. 149, and the general principles stated below. Section 190 reads as follows:

> "190.—(1) In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.
> (2) Such a contract shall be presumed to exist in the following cases:
>
> (*a*) .
>
> (*b*) where the agent does not disclose the name of his principal;
>
> (*c*) . . . ."

Whether an agent is to be taken to have contracted personally, or merely on behalf of the principal, depends on what appears to have been the intention of the parties, to be deduced from the nature and terms of the particular contract and the surrounding circumstances. In the case of oral contracts the question is purely one of fact: See *Pollock and Mulla* on Indian Contract and Specific Relief Acts, 8th edition, at page 697; and *Bowstead* on Agency, 12th edition, at page 257 and 270. In *Parker* v. *Winlow* (1857) 7 E. & B. 942, a charter-party was expressed to be made

between A, B and C, D, agent of E, F and Son, and was signed by C, D, without qualification. It was held that C, D was personally liable, though the principals were named, there had been nothing in the terms of the contract clearly inconsistent with an intention to contract personally. In *Long* v. *Miller* (1879) 4 C.P.D. 450 C.A., an estate agent contracted to sell land, and gave a receipt in his own name for the deposit. It was held that it was a question of fact whether he contracted personally. So, where an agent bought goods at a sale by auction, and gave his own name as buyer (*Williamson* v. *Barton* (1862) 7 H. & N. 899).

In the present case—

(*a*) the defendant company was a newly formed company which was registered in June, 1964, it commenced business in July, 1964, and the goods were shipped on the 20th August, 1964 ;

(*b*) it was not stated by defendants to Lamaris at any time that they were acting as agents ;

(*c*) in the receipt for the freight of £6 (which was the only document issued by the defendant company) it was not stated that they were acting as agents;

(*d*) the defendant company are the sole agents of the s.s. " Kypros " in Cyprus and they do not represent any other ship ; the controlling interest in the defendant company and in the Panama company, who are the owners of the s.s. " Kypros ", is owned by the Haji Ioannou family ;

(*e*) throughout the whole material time the defendant company, through their servants, acted in such a way as to give to Lamaris, an experienced forwarding and clearing agent for many years, the impression that the defendant company were the owners of the s.s. " Kypros " and that they were contracting as principals and not as agents ;

(*f*) in any event the defendant company acted for an undisclosed principal.

Having regard to the nature and terms of the particular contract and the surrounding circumstances I have no hesitation in finding as a fact that the defendant company contracted personally and not as agents.

Question (2) : Were the defendants common carriers or ordinary bailees ?

As Barnes, P., said in *Baxter's Leather Company* v. *Royal Mail Steam Packet Company* (1908) 2 K.B. 626, C.A., at page 630 :

> " The legal position of the parties, that is, of shipowners to shippers of goods, apart, of course, from the provisions of the particular bill of lading, has been established ever since the principles of mercantile law became to any extent fixed. Shipowners are not, strictly speaking, common carriers, but they are under the same kind of liability as common carriers unless that liability is cut down by a special contract ; in other words, by the insertion of excepted perils in the bill of lading that liability has been cut down to an ever-increasing extent until it now requires great ingenuity to discover in a bill of lading any matter in respect of which the shipowners' liability is not excluded."

Lord Wright, delivering the judgment of the Privy Council in *Paterson Steamships* v. *Canadian Wheat* (1934) A.C. 538, at page 544, quite generally, regarding the obligations attaching to a carrier of goods by sea or water :

> " At common law, he was called an insurer, that is he was absolutely responsible for delivering in like order and condition at the destination the goods bailed to him for carriage. He could avoid liability for loss or damage only by showing that the loss was due to the act of God or the King's enemies."

In *Beaumont-Thomas* v. *Blue Star Line* (1939) 3 All E.R. 127, at page 130, Scott, L.J. summarised the position as follows :

> " In the contract of a common carrier by land, or of a shipowner for the carriage of goods by sea, broadly speaking, the carrier is an insurer of the safe delivery of the goods. If they are damaged on the way, he is liable. That is his primary duty. There is also a secondary duty, however—namely, the duty to use skill and care. That duty comes into play in case of the carrier invoking some term of an exception clause as a protection against liability. In such a case, if the excepted peril has been occasioned by the negligence of the carrier's servants, the failure to perform the secondary duty debars him from reliance upon his exception. In the case of a carrier of passengers, no such double liability attaches. He is under a duty to use due skill and care, and no more. The absolute duty of the goods carrier to keep and deliver safely does not

apply. This fundamental difference in the basic contract caused the common law courts of England during the last 100 years to make a difference in the interpretation of general words of exception from liability according as the contract to be construed was one imposing the double duty or only the one duty."

Finally, *Carver* on Carriage of Goods by Sea, 10th edition, at page 19, summarises the common law rules as follows :

> " Where, then, a shipowner receives goods to be carried for reward, whether in a general ship with goods of other shippers, or in a chartered ship whose services are entirely at the disposal of the one freighter, it is implied at common law, in the absence of express contract—
>
> > ' That he is to carry and deliver the goods in safety, answering for all loss or damage which may happen to them while they are in his hands as carrier :
> >
> > Unless that has been caused by some act of God, or of the King's enemies ; or by some defect or infirmity of the goods themselves, or their packages ; or through a voluntary sacrifice for the general safety ;
> >
> > And, that those exceptions are not to excuse him if he has not been reasonably, careful to avoid or guard against the cause of loss, or damage ; or has met with it after a departure from the proper course of the voyage ; or, if the loss or damage has been due to some unfitness of the ship to receive the cargo, or to unseaworthiness which existed when she commenced her voyage '."

In short, shipowners are not strictly speaking common carriers, but they are under the same kind of liability as common carriers unless that liability is cut down by a special contract. In this case I hold that the defendants were under the same kind of liability as common carriers.

Question (3) : Was a contract concluded between the parties ? If yes, (*a*) What were its terms and (*b*) was the defendants' liability for any loss or damage to the goods excluded ?

The question is what was the contract between the parties ? The contract was an oral one. No document was signed or exchanged between the parties until the contract was completed. The receipt for the freight of £6 (*exhibit* 2),

which was made out by the cashier of the defendant company and handed to Lamaris after he paid the freight, cannot be regarded as the contract or as containing the terms of the contract ; but it confirms the evidence of Lamaris that the sum of £6 was " cargo rate for 6 packages shipped per s.s. " Kypros " on 20.8.1964. On the evidence of Lamaris, I have found as a fact that no liability was excluded, either orally or in writing, by the defendant company.

The oral contract was to the effect that the defendant company undertook to put the goods of the plaintiffs on the s.s. " Kypros " to be carried and delivered to the second plaintiff at Piraeus ; and they gave instructions to the purser of the ship to deliver the goods to the second plaintiff. They undertook to carry the goods for a reasonable reward, that is, on payment of the freight of £6. In fact, they received the plaintiffs goods, they placed them on the s.s. " Kypros " and they received payment of the freight of £6 on the 20th August, 1964. In these circumstances the oral contract between the parties stands unqualified and the defendants are liable as common carriers as the common law implies a contract between a sea carrier and a shipper (in default of other agreement) to the effect that a carrier will be entitled to a reasonable reward and that he is an insurer of the safe delivery of the goods. If they are damaged on the way he is liable.

Question (4) *:* Were the plaintiffs' goods damaged on the way and before delivery to them at Piraeus ?

It was the defendants' allegation that the damage to the goods was not caused during the voyage or during the discharge of the goods but after their discharge and from extraneous causes. On the evidence of the second plaintiff and having regard to the fact that the goods were wet with sea water and that they were found in a Customs shed half a kilometre away from the sea, I have no hesitation in finding that damage to the goods was caused during the voyage and not after their discharge from the ship. In the absence of any express contract as to the time of delivery of goods a carrier is only bound to deliver within a reasonable time. In this case the goods arrived at Piraeus on the 22nd of August, 1964, and they were not delivered until the 22nd September, 1964, despite the strenuous efforts of the plaintiffs to take delivery of their goods.

As stated in Halsbury's Laws of England, 3rd edition, volume 4, paragraph 391, at page 147, having once accepted the goods for carriage, it becomes the duty of the carrier

not only to carry safely, but also to deliver safely at the place to which the goods are directed. His liability ends only where there has been delivery, actual or constructive. In *Chapman* v. *Great Western Rail Co.* (1880) 5 Q.B.D. 278, it was pointed out by Cockburn, C.J. (at p. 281), that the liability of the carrier must usually extend beyond as well as precede the actual period of transit ; first, there is usually an interval between the receipt of the goods and their departure ; next, there is the time which in most cases must necessarily intervene between the arrival of the goods at the place of destination and the delivery to the consignee. Where the carrier is not bound to deliver at the house of the consignee, his liability as carrier ceases when he has brought the goods to the station of destination, and given the consignee notice of arrival, and allowed the consignee a reasonable time in which to remove the goods (*Mitchell* v. *Lancashire and Yorkshire Rail. Co.* (1875) L.R. 10 Q.B. 256 ; *Bradshaw* v. *Irish North Western Rail. Co.* (1873), I.R. 7 C.L. 252. On the facts as found by me and the law I hold that the plaintiffs' goods were damaged on the voyage and before delivery to the consignee (the second plaintiff).

Question (5) : Did the defendants break any of their contractual, common law or statutory duties?

In this case the defendants accepted the goods to be carried for reward, had the goods loaded on the ship and undertook to give instructions to the purser to deliver them to the second plaintiff at Piraeus. This was an oral contract and there were no express contractual obligations. But, on the authorities quoted earlier, in the contract of a shipowner for the carriage of goods by sea for reward it is implied at common law, in the absence of express contract, that the carrier is an insurer of the safe delivery of the goods, subject to certain exceptions (act of God, King's enemies, etc.) with which we are not concerned in this case (*Nugent* v. *Smith* (1876), 1 C.P.D. 423, C.A.).

As I have found that the plaintiffs' goods were damaged on the voyage and before delivery, defendants are liable for the breach of their common law duty.

Even if there was no special common law duty on shipowners for the carriage of goods by sea, on the evidence of Lamaris, which I have accepted, I would have no hesitation in finding that the defendant company are common carriers, and that as such they have failed to insure the safe delivery of the goods.

Finally, even if the defendants were ordinary bailees, there is ample evidence to support a finding that they failed to take that degree of care which would be shown by a reasonable man in the circumstances, that is, they failed to protect the goods from getting wet with sea water on the voyage and they failed to store them in a dry place on the ship.

(6) *Damages* : Defendants' counsel submitted that (*a*) the plaintiffs failed to make any declaration of value to the defendants ; and (*b*) that the plaintiffs were bound by their declaration to the Customs (blue 7) in which they stated that the value of the 6 cases was £200.

As regards (*a*), as the plaintiffs were not asked to declare the value of their goods to the defendants they were not bound to do so (see statement of the law later in this judgment).

As regards (*b*), the declaration, blue 7, is an "Export Entry (General)" Customs form which is submitted to the Customs Authorities by an exporter of goods. That form, which is dated 20th August, 1964, states that the number of packages is 6 and that they contain household and personal effects. In the column headed "value of goods F.O.B.", the figure "£200" has been inserted, and the declaration is signed by the first plaintiff. This point was put to the first plaintiff in cross-examination, and the explanation he gave is that he was told by the Government Authority responsible for the issue of export licences that he should declare the value of the goods which he had bought in Cyprus and not the value of those which he had brought with him from Greece. Be that as it may, I am of the view that this matter really goes to the credibility of the first plaintiff, and that it does not estop the plaintiffs from giving evidence that the goods have any higher value, as submitted by the defendants' counsel who cited the following extract from Halsbury's Laws of England, 3rd edition, volume 4, paragraph 399, page 151 : "If the consignor has declared the value of the goods before carriage, he is bound by such declaration, and is estopped from giving evidence that the goods have any higher value". This statement in Halsbury's Laws is based on two cases : *M' Cance* v. *London and North Western Rail. Co.* (1864), 3 H. & C. 343, *Ex. Ch.* ; and *Riley* v. *Horne* (1828) 5 Bing. 217. It should be noted that the decla-

ration form, blue 7, was made to the Customs Authorities and not to the defendants ; and, for this reason, I do not think that the plaintiffs are estopped from giving evidence that the goods have a higher value. This view is supported by what is stated at page 144, in the same volume of Halsbury's, which reads as follows :

> " 387. Declarations concerning goods : If a carrier asks no questions as to the contents of a parcel, no information need in general be given and the carrier is liable for the full value of the parcel if lost, but if the carrier asks questions, and the consignor answers falsely to the prejudice of the carrier, the consignor is guilty of fraud, and the carrier is not bound by the contract or liable for loss. If the consignor declares the goods are of a certain value, or if he acts in such a way as to represent them to be of a certain value, in order to secure a lower rate of carriage, he cannot allege subsequently that the goods were in fact of a higher value."

The *M' Cance* and *Riley* cases (quoted above) are quoted again in support of the last sentence in the above paragraph, which makes it abundantly clear that the declaration of value in order to be binding on the consignor must be made to the carrier and to no other person or authority ; and the falsity of such declaration must be proved to be to the prejudice of the carrier.

For ease of reference I have sub-divided Schedule " A ", which gives full particulars of the damage suffered by the plaintiffs, into Part I and Part II. Part I contains 38 items. Items 2 to 38 are the titles of used books of chemistry, literature, dictionaries, etc. Item 1 is a " PYE " stereophonic record reproducer (" Black Box " model), the value of which is stated to be £75. Part II consists of 26 items of used wearing apparel and clothing, except (*a*) item 2, which is an unused material " velvet " £2, (*b*) item 11, unused silk material £15, and (*c*) item 15, knitting wool £4.

Before proceeding to make my assessment, I think I ought to preface it with the following general observations. I do not think that the plaintiffs have given the Court the material to which the Court was entitled for the proper assessment of damages. They both appeared to me to

be rather naive and inexperienced in practical matters. On the other hand, the defendants, by their failure to attend at the Customs examination of the goods at Piraeus, although duly notified, were not in a position to adduce any evidence before the Court on this point.

The value of the books and wearing apparel given in Schedule " A " is the original value when bought new. The plaintiffs admitted that they had used the books and that they had worn the wearing apparel, but I have no detailed evidence as to the state either of the books or the wearing apparel at the time of their shipment. On the one hand, there is no doubt that all these goods had some value, but, on the other, there is no doubt that their value is not the original price paid for them at the time of purchase. Where the goods are entirely destroyed or lost by a common carrier, as in this case, the measure of damages recoverable against the carrier is *prima facie* the value of the property lost. If the plaintiffs' goods were new and unused there would be no difficulty. The owner is entitled to the value of goods dealt in by way of trade at the place to which they were consigned (see Halsbury's Laws, volume 4, paragraph 399, page 151, and the cases quoted in the footnotes).

In the present case on the material before me, giving the best consideration I can, I am of opinion that the plaintiffs should be compensated by the payment of 50% of the original value of the used wearing apparel and 75% of the original value of the used books. I am giving a higher percentage value to the books at the time of shipping, as I am of the view that the life of a book is longer than that of a wearing apparel.

In the case of the unused material and the knitting wool (items 2, 11 and 15 in Part II), the plaintiffs are entitled to recover the full value of these articles, that is to say, £21 in all. In the case of the " PYE " stereophonic record-player, the plaintiffs have failed to adduce satisfactory evidence as to its present state, and in assessing the damage in the case of this article I have taken into consideration (*a*) that it had been bought in Cyprus for £75 and used for 6–8 months before it was shipped ; and (*b*) the statement of the second plaintiff to the effect that the customs officer estimated that the damage caused to it was 75% ; and I, therefore, award the plaintiffs 75% of £60, that is £45.

The net result of my assessment is as follows :

Articles	*Amount claimed by plaintiffs*	*Damage assessed by Court*
(1) PYE record player (item 1 in Part I) ..	£ 75	£ 45 (75% of £60)
(2) Used books (items 2–38 in Part I) ..	£108.500 mils	£ 81 (75%)
(3) (*a*) Unused material (items 2, 11 and 15 in Part II) ..	£ 21	£ 21 (100%)
(*b*) Wearing apparel (all other items in Part II)	£275	£137 (50%)
Total ..	£479.500 mils	£284

The plaintiffs also claim the sum of £100 for loss of time, travelling, cables, etc., expenses incurred in taking delivery of the goods due to the negligence of the defendants. There again the plaintiffs did not put sufficient material before the Court to enable it to make a proper assessment. There is no doubt that the second plaintiff incurred expenses in overstaying in Athens for 25 days more than normally required, due to the default of the defendants, for the purpose of taking delivery of the goods and in travelling from Athens to Piraeus and back, for the purpose of clearing the goods from the Customs. The ship arrived on the 22nd August and she took delivery of the goods on the 22nd September. She was frank enough to say that she has not kept any note of those expenses though it is rather unfortunate. Doing the best I can with the material put before me, I assess those damages as follows :

(*a*) 25 days loss of time and subsistence at £1.500 mils per day £37

(*b*) Travelling expenses from Athens to the Customs at Piraeus and back, (several visits) £ 2

(*c*) Cables and letters to Cyprus .. .. .. £ 2

Total £41

The net result is that I assess the sum of £284 as loss or damage to the plaintiffs' goods and £41 for loss of time, travelling etc., that is to say, £325 in all.

There will, therefore, be judgment for the plaintiffs in the sum of £325 and costs.

Judgment and order as to costs accordingly.