1980 September 15

[TRIANTAFYLLIDES, P., HADJIANASTASSIOU, A. LOIZOU AND SAVVIDES, JJ.]

THE SHIP "NTAMA" AND ANOTHER,
*Appellants-Defendants,*

*v.*

TH. D. GEORGHIADES S.A.,
*Respondents-Plaintiffs,*

(*Civil Appeal No.* 5875).

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*Admiralty—Shipping—Bill of lading—Time bar—"Paramount Clause"—Hague Rules—Article III, rule* 6—"*Unless suit is brought within one year after delivery*"—*Action in Greece within period of limitation—Second action in Cyprus outside period of limitation—Second action time barred.*

*Admiralty—Practice—Jurisdiction—Action in personam—Issue of time bar—Whether it can be decided as a preliminary issue in interlocutory proceedings.*

*Practice—Jurisdiction to determine issue of time bar as a preliminary issue in interlocutory proceedings—Not raised at the Court below—Whether it can be raised on appeal.*

The appellants-defendants, by a bill of lading dated March 9, 1977, acknowledged the shipment on board their vessel at Kings Lynn of 383 cartons containing filtrona dua, filter for cigarettes, for the carriage to and delivery to Piraeus. The bill of lading, under the heading "Paramount Clause", included the term that "the Hague Rules contained in the International Convention for the Unification of certain rules relating to Bills of Lading ..... shall apply to this contract .....". On April 15, 1977, the cargo in question was delivered in a damaged condition at the port of Patra instead of Piraeus. On March 27, 1978 the respondents-plaintiffs, owners of the cargo, started proceedings against the appellants in Greece claiming damages for the loss incurred by them; and on July 20, 1978 they, also, started proceedings in the Supreme Court of Cyprus, in its admiralty jurisdiction, for the recovery of damages from the appellants.

In interlocutory proceedings relating to a warrant of arrest of the defendant ship the trial Judge, relying on Article III rule 6* of the Hague Rules, held that the action which was brought in Greece prevented the plaintiffs' action in Cyprus from being time-barred.

Upon appeal counsel for the appellants-defendants contended that the above finding of the trial Judge was wrong in law and in fact, and that the issue for decision in these proceedings was whether the Cyprus case was instituted within the relevant limitation period provided by Article III r. 6 of the Hague Rules. On the other hand Counsel for the respondents-plaintiffs contended that the trial Judge had no jurisdiction to decide the case at that early stage as a preliminary issue in interlocutory proceedings.

*Held*, (1) that the deciding factor in determining whether an action is time-barred, under a statute of limitation, is the date on which the suit before the Court is brought and not whether other proceedings had been instituted within the period of limitation; that the words "unless suit is brought within one year" in Article III, rule 6, of the Hague Rules meant "unless the suit before the Court" was so brought; and that, accordingly, the proceedings in Greece do not prevent the plaintiffs' action from being time-barred under the said Article III, rule 6.

(2) *On the contention of Counsel for the respondents that the issue of time bar could not be decided at that early stage of the proceedings*:

That once counsel for the respondents had not raised any objection to the jurisdiction at that stage it is too late now to embark on appeal on this new argument which was never raised before the learned trial Judge; that it is open to a defendant to apply to the Court at an early stage of an action for a stay on the ground that the action has no chance of success and is therefore vexatious and the Court certainly has power, in the exercise of its inherent jurisdiction, to grant a stay on that ground; that though the best course for the learned Judge was to have followed

* Rule 6 so far as relevant reads as follows:

"..... in any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered".

a different approach, and that he should not have decided the case during that interlocutory stage, as both counsel did not invite the Court to take a different stand, and the case was concluded and judgment was delivered without any complaint or any argument to the opposite, there is no reason for this Court to interfere at this late stage; and that, accordingly, counsel's contention must fail (the case of "*Moschanthy*" [1971] 1 Ll. Law Reports 37 *distinguished*).

*Appeal allowed.*

Cases referred to:

*The "Moschanthy"* [1971] 1 Ll. Law Reports, 37;

*Anglo Saxon Petroleum Co. Ltd.* v. *Adamantios Shipping Co. Ltd.* [1957] 2 All E.R. 311 at p. 316;

*Nea Agrex S.A.* v. *Baltic Shipping Co. Ltd. and Another* [1976] 2 All E.R. 842;

*Compania Colombiana De Seguros* v. *Pacific Steam Navigation Co.* [1965] 1 Q.B.D. 101;

*Consolidated Investment* v. *Saponaria Shipping* [1978] 3 All E.R. 988;

*Federal Commerce* v. *Molena Alpha* [1978] 3 All E.R. 1066.

**Appeal.**

Appeal by defendants against the judgment of the Supreme Court of Cyprus (Malachtos, J.) dated the 31st July, 1978 (Admiralty Action No. 286/78) by virtue of which it was held that an action brought in Greece prevented plaintiffs' action in Cyprus from being statute-barred.

*L. Papaphilippou*, for the appellants.

*M. Vassiliou* with *T. Saloman*, for the respondents.

*Cur. adv. vult.*

TRIANTAFYLLIDES P.: The judgment of the Court will be delivered by Mr. Justice Hadjianastassiou.

HADJIANASTASSIOU J.: In the present appeal the appellants, the ship "NTAMA" and Ntama Navigation Co. Ltd., of Limassol, the ship owning company, challenge the decision* of a Judge of this Court, under section 11 of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law No. 33/64), on the ground that the learned Justice wrongly reached the

* Reported at pp. 398-403 *post.*

conclusion that the action brought in Greece prevented the plaintiffs' action in Cyprus from being time-barred.

1. *THE FACTS*

The plaintiffs, Th. D. Georghiades S.A., of Athens, are the owners of a cargo laden on board the ship "NTAMA". Defendants No. 2, Ntama Navigation Co. Ltd. are the ship owning company, and by a bill of lading dated 9th March, 1977, the ship owning company acknowledged a shipment on board their vessel "NTAMA" at the port of loading at Kings Lynn of 383 cartons containing filtrona dua, filter for cigarettes, for the carriage to and delivery to Piraeus. The bill of lading issued was stamped "freight prepaid" with import licence No. 897365. There was also an acknowledgment that the cargo was shipped on board in apparent good condition. The bill of lading contained also the terms "Liner terms approved by The Baltic and International Maritime Conference". Under the heading "Paramount Clause" para. 2, it is stated: "The Hague Rules contained in the International Convention for the Unification of certain rules relating to Bills of Lading, dated Brussels the 25th August, 1924, as enacted in the country of shipment shall apply to this contract when no such enactment is in force in the country of shipment the corresponding legislation of the country of destination shall apply, but in respect of shipments to which no such enactments are compulsorily applicable, the terms of the said Convention shall apply."

The cargo in question was discharged on 15th April, 1977, at the port of Patras instead of Piraeus, and was found damaged and/or in a worthless condition. The owners of the said cargo feeling aggrieved and having failed apparently in their negotiations to agree as to the question of damages, instituted an action in Greece dated 27th March, 1978, against the ship "NTAMA" claiming an amount of damages for the loss incurred by them.

On 20th July, 1978, the plaintiffs instituted another action in Cyprus claiming against the defendants £27,500 damages for the loss or damage of the said cargo and/or delivery of the cargo during the voyage from Kings Lynn to Piraeus sustained by reason of the defendant's breach of contract and/or duty and/or negligence. On the same date the plaintiffs applied for a warrant of arrest of the ship "NTAMA" which was anchored at the port of Limassol, and Mr. Justice Malachtos in granting the

warrant of arrest issued also directions to the Marshal to release the ship "NTAMA" upon directions from the Registrar of this Court, on the filing of a security bond by or on behalf of the ship in the sum of £20,000.— for the satisfaction of any order or judgment for the payment of money made against the ship or her owners.

2. *THE FINDINGS OF THE TRIAL JUDGE*

The learned trial Judge having listened to the arguments of both counsel on the legal issues, delivered his reserved judgment on 31st July, 1978, and had this to say:-

> "Now as to the contention of counsel as regards the application of Carriage of Goods by Sea Law, Cap. 263, the relevant legislative provision has no application in view of the provisions of section 2 of this Law since the goods were not loaded in Cyprus. This section is as follows:
>
> > 'Subject to the provisions of this Law, the rules set out in the Schedule hereto (in this Law referred to as 'the rules') shall have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from any port in Cyprus to any other port in or outside Cyprus.'
>
> In the present case the goods were shipped outside Cyprus. This, however, has no significance in the case in hand in view of the paramount clause in the bill of lading. The Hague Rules apply in the present case as there is a stipulation between the parties. (See in this respect the case of *Aries Tanker Corporation v. Total Transport Ltd.* [1977] 1 All E.R. 398). However, in this case Action No. 613/78 was brought on 27th March, 1978, in Greece within the time limit and the question that arises is whether this covers the requirement of the rules. From what is stated in paragraph 274(A) of Carvers Carriage of Goods by Sea, volume 1 at p. 241 the requirements of the rules are covered. The said paragraph is as follows:
>
> > ' 'Suit.' This word includes arbitration. That was decided by the Court of Appeal in *The Merak*. A note was inserted in the sixteenth edition (1955) of Scrutton on Charterparties as follows: 'If suit is brought

within a year in one jurisdiction it is submitted that this should be sufficient to satisfy the paragraph and would justify the goods-owner's succeeding in a suit started after a year in another jurisdiction.' But in *Compania Colombiana de Seguros v. Pacific S. N. Co.* Roskill J. rejected that proposition. 'Does unless suit is brought within one year', he said, 'mean 'unless the suit is brought anywhere within one year', or does it mean 'unless the suit before the Court is brought within one year'? Applying ordinary canons of construction to that, I think it must mean unless the suit before the Court is brought within one year'. It is arguable, however, that that view is based on a false analogy of Limitation Act cases, and that bringing a suit before any Court having jurisdiction in the matter within the year is sufficient to prevent the carrier being discharged from liability by the terms of Art. III, r. 6.'

.....

Since it is clear from the writ of summons issued in Greece in Action No. 613/78 on the 23rd March, 1978, on the same subject matter, that the claim of the present plaintiffs is a claim in personam against the owning company of the ship 'NTAMA' namely, Ntama Navigation Co. Ltd., I see nothing to prevent them from instituting the present proceedings in this country.

For the above reasons the order for the arrest of the defendant 1 ship, issued on 20th July, 1978, should remain in force under the same terms and conditions till any further order of the Court."

We would like to add that after the delivery of the judgment in question, the ship "NTAMA" was released by the learned Justice on 1st August, 1978, and the ship owners accepted and filed a guarantee in the sum of £20,000.—.

3. *GROUND OF LAW*

On appeal, counsel in support of his single ground of law, argued that the finding of the learned trial Judge that once the respondents have filed an action in Greece, that action prevented the present action in Cyprus from being time-barred, was wrong

in law and in fact. Counsel further argued that the point for decision in the present proceedings, is whether the case filed in Cyprus was instituted within the relevant limitation period provided by Article III r. 6 of the Carriage of Goods by Sea Act 1924; and that the learned Justice wrongly interpreted the words "unless suit is brought within one year".

On the contrary, Mr. Saloman, who finally appeared with Mr. Vassiliou, after a number of adjournments of the case, in supporting the judgment of the learned Judge, argued at length that the ground of appeal, viz., that the action in Cyprus is time-barred, is unsustainable according to the principles of English Law, the facts of this case, and because of the principle of law governing interlocutory applications. He further stressed in his argument that the onus is cast on the defendant to satisfy the Court that upon an interlocutory application to dismiss the claim—being time-barred, he has to show that the claim is hopeless beyond doubt, and that it ought not to be allowed to proceed to trial. Counsel further suggested that in these cases the defendant should be told by the Court that "you have an arguable point of defence and you can raise it in your defence. You can make it a preliminary issue and not as a preliminary issue in interlocutory proceedings". He relied on the "Moschanthy", [1971] 1 Ll. Law Reports, 37.

4. *THE CASE LAW*

There is no doubt that the parties have expressly incorporated in the bill of lading the "Paramount Clause". What does the "Paramount Clause" or "Clause Paramount" mean in shipping? Primarily, it applies to bills of lading. In this context we think it means a clause by which the Hague Rules are incorporated into the contract evidenced by the bill of lading and which overrides any express exemption or condition that is inconsistent with it. If authority is needed we think the answer is given by Lord Denning, L.J., as he then was, in *Anglo Saxon Petroleum Co. Ltd.* v. *Adamastos Shipping Co. Ltd.*, [1957] 2 All E.R. 311 at p. 316 where he says:-

> "When a Paramount Clause is incorporated into a contract, the purpose is to give the Hague Rules contractual force: so that, although the bill of lading may contain the required exemptions, the rules are paramount and make the ship-

owners liable for want of due diligence to make the ship seaworthy and so forth."

See also *Nea Agrex S.A.* v. *Baltic Shipping Co. Ltd. and another*, [1976] 2 All E.R. 842.

As we have said earlier, the shipowners relied on the incorporation of the "Paramount Clause" contained in the bill of lading, and in particular, on Article III, rule 6 of the Carriage of Goods by Sea Act, 1924, which so far as material, it says that: "In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered."

Having considered very carefully the wording of Article III, rule 6 of the Rules scheduled to the Carriage of Goods by Sea Act, 1924, we are of the view, that in the said bill of lading the charterparty by incorporating the "Paramount Clause", included also the Hague Rules regarding the time-bar of one year.

In *Compania Colombiana De Seguros* v. *Pacific Steam Navigation Co.* [1965] 1 Q.B.D. 101, Roskill, J., dealing with the provisions of Article III, rule 6, had this to say at p. 126.

"Mr. Littman ultimately did not challenge this proposition as a correct statement of the principles applicable to a case arising under the Limitation Act, 1939, but argued that because of the international character of the Hague Rules I should not apply a purely domestic standard of construction, and he pointed to the fact that the language of article III, rule 6, is different from that of section 2 of the Limitation Act, 1939. But, of course, as I have already said, I have to construe an English statute, the Carriage of Goods by Sea Act, 1924, to which this and other rules are scheduled. In the end the question is this: Does 'unless suit is brought within one year' mean 'unless suit is brought anywhere within one year', or does it mean 'unless the suit before the Court is brought within one year'? Applying ordinary canons of construction to the rule I think that it must mean 'unless the suit before the Court is brought within one year'.

My only hesitation in reaching this conclusion arises from a note upon this rule in Scrutton on Charterparties,

16th ed. (1955), p. 478. In this note, introduced for the first time in the 16th ed., the editors, McNair J. and Mocatta J. (whose authority in these matters needs no emphasis from me) stated that 'If suit is brought within a year in one jurisdiction it is submitted that this should be sufficient to satisfy the paragraph and would justify the goods-owner's succeeding in a suit started after a year in another jurisdiction'.

Clearly, if this expression of opinion is right, my conclusion is wrong, but I am fortified in my conclusion by the fact that no reasons are given for that expression of opinion. The cases on the various English limitation Acts were not, it seems, in the minds of the editors and they did not have, as I have had, the advantage of full and elaborate argument upon this point.

In reaching this conclusion, I have not lost sight of Mr. Littman's argument that there are differences of language between the rule and section 2 of the Limitation Act, 1939, but in my judgment the decision must turn upon what the words of the rule mean, and not upon verbal differences between one statute and another."

With respect, we would adopt and apply the ratio decidendi of the judgment of Roskill, J., that the deciding factor in determining whether an action is time-barred under a statute of limitation, is the date on which the suit before the Court is brought and not whether other proceedings had been instituted within the period of limitation; and that the words "unless suit is brought within one year" in Article III, rule 6, of the Schedule to the Carriage of Goods by Sea Act, 1924, meant "unless the suit before the Court" was so brought; and accordingly the proceedings in Greece do not prevent the plaintiffs' action from being time-barred under Article III, rule 6 of the Rules to the Carriage of Goods by Sea Act, 1924.

Regretfully, when Mr. Justice Malachtos delivered his judgment, counsel appearing in that case did not bring to his notice that in the latest edition of Scrutton on Charterparties, 18th edition by Sir Alan A. Mocatta, Michael J. Mustill and Stewart C. Boyd, that statement, relied by the learned Judge, has been rejected, and we read from pp. 428, 429:

" 'Unless suit is brought'. The suit must be brought in

the jurisdiction in which the dispute is decided. Thus, if proceedings are not instituted in time in that jurisdiction the claim is barred, notwithstanding that suit was brought in another jurisdiction within a year after discharge."

It should be stated that the case of *Compania Colombiana De Seguros* (*supra*) is quoted as an authority, and the learned authors by citing that case are obviously accepting the ratio decidendi of Roskill, J., as still being good law.

With respect if any further authority is needed, the case of *Aries Tanker Corporation* v. *Total Transport* [1977] 1 All E.R. 398 H.L. provides also the answer regarding the construction of Article III, rule 6. Lord Wilberforce having quoted Article III, rule 6 of the Schedule to the Carriage of Goods by Sea Act, 1924, had this to say at pp. 402, 403:

"My Lords, if this case is to be decided on the terms of the contract it would appear to me to be a comparatively simple one. There is an obligation to pay freight, calculated on the amount of cargo intaken, which obligation arises on discharge. There is no dispute as to the amount: it is a liquidated claim. The contract contemplates the possibility of a cross-claim by the clarterers in respect of loss or damage to the cargo and it expressly provides by incorporation of art III, r 6 of the Hauge Rules that the carrier and the ship shall be discharged unless suit is brought within one year after the date of delivery or the date when delivery should have been made. This amounts to a time-bar created by contract. But, and I do not think that sufficient recognition to this has been given in the Courts below, it is a time-bar of a special kind, viz, one which extinguishes the claim (cf art 29 of the Warsaw Convention 1929) not one which, as most English statutes of limitation (e g the Limitation Act 1939, the Maritime Conventions Act 1911), and some international conventions (e g the Brussels Convention on Collisions 1910, art 7) do, bars the remedy while leaving the claim itself in existence. Therefore, arguments to which much attention and refined discussion has been given, as to whether the charterer's claim is a defence, or in the nature of a cross-action, or a set-off of one kind or another, however relevant to cases to which

the Limitation Act 1939 or similar Acts apply, appear to me, with all respect, to be misplaced.

The charterers' claim, after May 1974 and before the date of the writ, had not merely become unenforceable by action, it had simply ceased to exist, and I fail to understand how a claim which has ceased to exist can be introduced for any purpose into legal proceedings, whether by defence or (if this is different) as a means of reducing the owners' claim, or a set–off, or in any way whatsoever. It is a claim which, after May 1974, had no existence in law, and could have no relevance in proceedings commenced, as these were, in October 1974. I would add, though this is unnecessary since the provision is clear in its terms, that to provide for the discharge of these claims after 12 months meets an obvious commercial need, namely to allow ship–owners, after that period, to clear their books.

The charterers tried to escape from this result in two ways. First, they said (which was factually correct) that they had asserted their claim within the 12 months by deducting the amount of it from the freight, that there was nothing more that they need, or could, do; that after they had taken this step, it would be absurd to require them to commence a suit for money they already had; that the action taken had, as it were, firmly placed the ball in the owners' Court and not in theirs. The charterers' counsel made all this sound very attractive but to my mind it has no substance.....

There is no suggestion that the owners in any way lulled the charterers into a false sense of security so that it would be unfair for them to rely on the timebar: the owners made it clear that they did not agree the deduction; thereafter it had to be established by suit, with the risk of becoming discharged if the suit were not started by May 1974.....

Then the charterers sought by argument to show that the law, as it is or, alternatively, as it ought to be declared by this House, allows claims in respect of short delivery of cargo to operate by way of reduction of the freight, so that, in their contention, the owner can only sue for a reduced amount, viz., the freight contracted for less a deduction for short delivery. It was to this argument that their major

effort was directed both here and in the Court of Appeal. It involved, in effect, a contention that *Henriksens Rederi A/S v. THZ Rolimpex The Brede* [1973] 3 All E.R. 589, [1974] Q.B. 233, a case indistinguishable on its facts from the present—was wrong and should be overruled.

My Lords, I have given my reasons why I consider that this argument, even if successful, cannot help the charterers in this appeal to overcome the contractual time-bar; but I have to deal with it in case Your Lordships are unwilling to follow me on the primary argument."

See also the case of *Consolidated Investment* v. *Saponaria Shipping*, [1978] 3 All E.R. 988 where the dictum of Lord Wilberforce at p. 402 was distinguished. The case was also distinguished in *Federal Commerce* v. *Molena Alpha*, [1978] 3 All E.R. 1066.

Turning now to the argument of counsel that the learned Judge had no jurisdiction to decide the case at that early stage of the proceedings, with respect to counsel, once he had not raised any objection to the jurisdiction at that stage, we think it is too late now to embark on appeal on this new argument which, as we have said earlier, was never raised before the learned trial Judge. Indeed, having had the occasion to consider, on appeal, the case quoted by counsel for the respondent, we think that the case of *Moschanthy* (*supra*) is distinguishable from the facts of the present case, and particularly because the various arguments that were heard by Mr. Justice Brandon from both sides were not before the trial Court in the present case. Indeed, we are not disputing that it is open to a defendant to apply to the Court at an early stage of an action for a stay on the ground that the action has no chance of success and is therefore vexatious; and the Court certainly has power, in the exercise of its inherent jurisdiction, to grant a stay on that ground. We agree with counsel for the respondent, that the best course for the learned Judge was to have followed a different approach, and that he should not have decided the case during that interlocutory stage. But with respect, we repeat, both counsel did not invite the Court to take a different stand, and the case was concluded and Judgment was delivered without any complaint or any argument to the opposite, and we, therefore, see no reason to interfere at this late stage.

In the light of the authorities, and for the reasons we have given at length, we have decided to allow the appeal, once the claim is time-barred and extinguished.

Appeal allowed, but in the particular circumstances, we are not making any order as to costs. The bond of guarantee filed by the ship-owners for the sum of £20,000.—to be released by the Registrar of the Supreme Court.

*Appeal allowed.*
*No order as to costs.*

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The judgment of the Court below which was delivered on July 31, 1978 by Malachtos J. reads as follows:

MALACHTOS J.: On the 20th July, 1978 the plaintiffs instituted legal proceedings against the defendants claiming as stated in the writ of summons, as owners of cargo lately laden on board the defendant 1 ship "NTAMA" of the port of Limassol and or consignees and or as holders and or indorsees of the bill of lading, whereunder the said cargo was shipped, an amount of St. £27,500.—or its equivalent in Cyprus currency, damages for loss and or damage to the said cargo during the voyage from Kings Lynn to Piraeus, sustained by reason of the defendants breach of contract and or negligence in or about the carriage thereof with interest and costs. At the same time upon an *ex parte* application accompanied by an affidavit they obtained an order for the arrest of the defendant 1 ship, which was at the time anchored at the port of Limassol.

In the said affidavit it is alleged that the plaintiffs a Commercial Society Anonyme, registered in Athens Greece, were owners and or consignees of 383 cartons of filtrona dua, filter for cigarettes, lately laden on board the defendant ship in Kings Lynn, U.K. for destination Piraeus under a bill of lading No. 44, dated 9th March, 1977. The ship "NTAMA" instead of Piraeus deviated to Patras where the said cargo was discharged on 15th April, 1977 fully destroyed and or damaged in an unused worthless condition. The defendants, therefore, failed to deliver the said cargo in good order and condition and so the plaintiffs suffered damage to the extent stated in the writ of summons. In view of the fact that the plaintiffs were unable to obtain any compensation they instituted legal proceedings against the defendants.

On the 27th July, 1978, when the case was fixed for the defendants to show cause against the continuance in force of the order of arrest, an appearance was entered on behalf of the defendant ship opposing the application.

Counsel for the defendant ship argued that the action and the claim as such are statute barred in view of the provisions of Article III Rule 6 of the Rules relating to bills of lading in the schedule of the Carriage of Goods by Sea Law, Cap. 263. This rule reads as follows:

> "6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.
>
> The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.
>
> In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.
>
> In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods."

Counsel for the respondent ship, further submitted that his argument that the claim of the plaintiffs is statute barred is also supported by the paramount clause of the relevant bill of lading (*exhibit* 1) which provides that the Hague Rules contained in the International Convention for the Unification of certain rules relating to Bills of Lading, dated Brussels the 25th August 1924, as enacted in the country of shipment shall apply to this contract. When no such enactment is in force in the country of shipment the corresponding legislation of the country of destination shall apply, but in respect of shipments to which no such enactments are compulsorily applicable, the terms of the said Convention shall apply.

Article III rule 6 of the Hague rules contained in the International Convention for the Unification of certain rules relating to bills of lading signed at Brussels on August 25th 1924 contains identical provisions to those contained in Article III rule 6 of the Rules relating to bills of lading in the schedule of Cap. 263. As the unloading took place on 15th April, 1977, and proceedings were instituted before this Court on 20th July, 1978, counsel for the defendant ship submitted that the claim of the plaintiffs is statute barred.

The other argument of counsel for the defendant ship is that in view of the fact that there is a pending action in Greece between the same parties for the same bill of lading the principle of lis alibi pendens applies. The plaintiffs have arrested the vessel to secure a claim pending in another country. They did not disclose this fact to the Court. In fact a copy of the writ issued in Greece in Action No. 613/78 filed on 27th March, 1978, has been produced and appears in the file of the Court. Finally, counsel for the defendant ship submitted that the plaintiffs cannot secure consequential remedies for other proceedings pending in another Court and cited the case of *Soya Margaretta owners of cargo on board the ship Soya Levisa* v. *Owners of the Soya Margaretta* [1960] 2 All E.R. 756.

Now as to the contention of counsel as regards the application of Carriage of Goods by Sea Law, Cap. 263, the relevant legislative provision has no application in view of the provisions of section 2 of this Law since the goods were not loaded in Cyprus. This section is as follows:

> "Subject to the provisions of this Law, the rules set out in the Schedule hereto (in this Law referred to as "the rules") shall have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from any port in Cyprus to any other port in or outside Cyprus."

In the present case the goods were shipped outside Cyprus. This, however, has no significance in the case in hand in view of the paramount clause in the bill of lading. The Hague Rules apply in the present case as there is a stipulation between the parties. (See in this respect the case of *Aris Tanker Corporation* v. *Total Transport Ltd.* [1977] 1 All E.R. 398). However, in this case Action No. 613/78 was brought on 27th March, 1978, in Greece within the time limit and the question that arises is

whether this covers the requirement of the rules. From what is stated in paragraph 274(A) of Carvers Carriage of Goods by Sea, volume 1 at p. 241 the requirements of the rule are covered. The said paragraph is as follows:

" 'Suit'. This word includes arbitration. That was decided by the Court of Appeal in *The Merak*. A note was inserted in the sixteenth edition (1955) of Scrutton on Charter-parties as follows: 'If suit is brought within a year in one jurisdiction it is submitted that this should be sufficient to satisfy the paragraph and would justify the goods-owner's succeeding in a suit started after a year in another jurisdiction.' But in *Compania Colombiana de Seguros* v. *Pacific S.N. Co.* Roskill J. rejected that proposition. 'Does unless suit is brought within one year', he said, 'mean 'unless suit is brought anywhere within one year', or does it mean 'unless the suit before the Court is brought within one year'? Applying ordinary canons of construction to that, I think it must mean unless the suit before the Court is brought within one year.' It is arguable, however, that that view is based on a false analogy of Limitation Act cases, and that bringing a suit before any Court having jurisdiction in the matter within the year is sufficient to prevent the carrier being discharged from liability by the terms of Art. III, r. 6."

As to the second argument of counsel about the principle of lis alibi pendens the case of *Soya Margaretta* quoted above cited by him supports the opposite view. At p. 761 of the report Hewson J. had this to say:

"As I have already said, I have been referred to a number of cases including *The Hartlepool*[1], and I propose to read a passage from the judgment of WILLMER, J. There the learned Judge said this[2]:

'The fact that no security has been furnished in the proceedings abroad distinguishes this case at once from that of *The Christiansborg*[3], and the other cases, of which there are quite a number, in which

1. [1950], 84 Lloyd's Rep. 145.
2. [1950], 84 Lloyd's Rep. at page 146.
3. [1885], 10 P.D. 141; 5 Asp. M.L.C. 491.

attempts have been made in one form or another to initiate proceedings in rem in two countries at once.

Over and over again it has been held that once a ship has been arrested and bail or security has been furnished, the ship's release has been purchased, and she is free from further arrest in any country in respect of the same claim. But that is something very different from the situation which has arisen in this case. Here it is merely a personal action which has been started abroad; and where a personal action has been started abroad and it is desired to sue here as well, there is no doubt that it is a matter for the discretion of the Court whether to make an order in the action in this country.'

If I may say so, with respect, I adopt those words of the learned Judge with the reminder that in this case the action initiated by the charterers in Italy was, so far as I have been able to discover at this hearing, purely in personam. They have, for reasons which they have doubtless considered, chosen to proceed in rem in this country and so obtain the security to which I have already referred. Though convenience is a matter, as I have already said, not lightly to be discarded, I do not think that there is such a preponderance of convenience in the getting together of the evidence necessary in this case as to make this action so vexatious that I ought to prevent the charterers from following the course which they have chosen".

The above principles were followed in the case of *Reederei Schulte & Bruns Baltic Schiffahrts* v. *Ismini Shipping Co. Ltd.* (1975) 1 C.L.R. 433, by the trial Judge and were approved on appeal from this case by the Full Bench of this Court. The report appears in (1976) 1 C.L.R. 132.

Since it is clear from the writ of summons issued in Greece in Action No. 613/78 on the 27th March, 1978, on the same subject matter, that the claim of the present plaintiffs is a claim in personam against the owning company of the ship "NTAMA" namely, Ntama Navigation Co. Ltd., I see nothing to prevent them from instituting the present proceedings in this country.

For the above reasons the order for the arrest of the defendant

1 ship, issued on 20th July, 1978, should remain in force under the same terms and conditions till any further order of the Court.

It is also ordered that the costs will be costs in cause but in no case against the applicants plaintiffs.

*Order accordingly.*