HOUSE OF LORDS SESSION 2003–04
[2004] UKHL 49

on appeal from: [2003] EWCA Civ 144

OPINIONS

OF THE LORDS OF APPEAL

FOR JUDGMENT IN THE CAUSE

Jindal Iron and Steel Co Limited and others (Appellant) and others
v.
Islamic Solidarity Shipping Company Jordan Inc (Respondents)

ON
THURSDAY 25 NOVEMBER 2004

The Appellate Committee comprised:

Lord Bingham of Cornhill
Lord Nicholls of Birkenhead
Lord Steyn
Lord Hoffmann
Lord Scott of Foscote

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LORD BINGHAM OF CORNHILL

My Lords,

1. I have had the advantage of reading in draft the opinion of my noble and learned friend Lord Steyn. I agree with it, and would dismiss the appeal for the reasons which he gives.

LORD NICHOLLS OF BIRKENHEAD

My Lords,

2. I too would dismiss this appeal. I express no view on the correctness of the interpretation of article III, rule 2 of the Hague and the Hague-Visby rules adopted by Devlin J in *Pyrene* v *Scindia Navigation Co Ltd* [1954] 2 QB 402 and by your Lordships' House in *GH Renton & Co Ltd* v *Palmyra Trading Corporation of Panama* 1957 AC 149. But for the reasons given by my noble and learned friend Lord Steyn I agree this interpretation should not now be disturbed.

LORD STEYN

My Lords,

3. This appeal concerns the interpretation of the Hague and Hague-Visby Rules. By article III, r. 2 and 8, they provide as follows:

> "2. Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried."
>
> "8. Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect."

Article IV, r. 2, reads as follows:

> "Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from –
>
> …
>
> (i) Act or omission of the shipper or owner of the goods, his agent or representative;
>
> (q) Any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier . . ."

The central issue is whether (as shippers and consignees argue) article III, r. 2 of the Rules defines the irreducible scope of the contract of service to be provided by the carrier by sea or (as the carrier argues)

article III, r. 2 merely stipulates the manner of performance of the functions which the carrier has undertaken by the contract of service. In cases where the parties to a contract of carriage agree that loading, stowage and discharge are to be performed by shippers, charterers, and consignees, the specific question is whether the carrier is nevertheless liable to cargo owners when the latter, or their stevedores, perform those functions improperly or carelessly. In other words, the question is whether such an agreement, which transfers responsibility for these operations from the shipowners to shippers, charterers or consignees, is invalidated by article III, r. 8.

4. Long-standing precedent is to the effect that such a reallocation of risk by agreement is permissible and that in the postulated circumstances the carrier is not liable: *Pyrene Co Ltd v Scindia Navigation Company Ltd* [1954] 2 QB 402 per Devlin J; *G H Renton & Co Ltd v Palmyra Trading Corporation of Panama* [1957] AC 149. Cargo owners unsuccessfully challenged the existing rule in the High Court (before Mr Nigel Teare QC, sitting as a Deputy High Court Judge) and before the Court of Appeal (Waller and Tuckey LJJ and Mrs Justice Black): *Jindal Iron & Steel Company Limited and Others v Islamic Solidarity Shipping Company Jordan Inc. and Another (The Jordan II)* [2003] EWCA Civ 144; [2003] 2 Lloyd's Rep 87. Cargo owners invite the House to reverse the existing rule.

I. The Charterparty and Bills of Lading.

5. Islamic Solidarity Shipping Company Jordan Inc are the owners of the vessel Jordan II. By a charterparty on the Stemmor form dated 4 December 1997 at Hamburg the owners chartered the vessel to TCI Trans Commodities A.G. for a voyage from Mumbai in India to Barcelona and Motril in Spain. Jindal Iran and Steel Company Limited and Hiansa S.A. are respectively the sellers and purchasers of 435 steel coils. The goods were shipped from Mumbai aboard the vessel as evidenced by two bills of lading on the Congenbill form, both dated 2 January 1998, which were issued on behalf of the shipowners at Mumbai. The bills of lading contained or evidenced contracts of carriage to Motril, in Spain. The bills of lading named Jindal Iron and Steel Company Limited as the shippers and Hiansa S.A. as consignees. The relevant provisions on the face of the bills of lading were as follows:

"Freight payable as per CHARTERPARTY
dated 04.12.97"

On the reverse of the bill of lading, the relevant terms of the contact of carriage provided as follows:

> "(1) All terms and conditions, liberties and exceptions of the Charterparty, dated as overleaf, are herewith incorporated … "
>
> (2) General Paramount Clause
>
> The Hague Rules contained in the International Convention for the Unification of certain rules relating to bills of lading, dated Brussels the 25 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.
>
> *Trades where Hague-Visby Rules apply.*
>
> In trades where the International Brussels Convention 1924 as amended by the Protocol signed at Brussels on February 23 1968 - the Hague-Visby Rules - apply compulsorily, the provisions of the respective legislation shall be considered incorporated in this Bill of Lading."

The bills of lading incorporated the voyage charterparty. The Hague-Visby Rules as enacted in Indian legislation were applicable to this shipment. They correspond to the draft Hague Rules as enacted in the United Kingdom by the Carriage of Goods by Sea Act 1924, which in material respects are the same as the Hague-Visby Rules scheduled to the Carriage of Goods by Sea Act 1971.

6. Clauses 3 and 17 of the charterparty, so far as material, provided:

"3. Freight to be paid at the after the rate of US$ … per metric ton F.I.O.S.T. -
LASHED/SECURED/DUNNAGED … "

17. Shippers/Charters/Receivers to put the cargo on board, trim and discharge cargo free of expense to the vessel."

The acronym F.I.O.S.T. stands for Free In and Out Stowed and Trimmed. There was, therefore, under the charterparty an agreement that the "Shippers/Charterers/Receivers" were to put the cargo on board, stow it, lash it, secure it, dunnage it and discharge it free of expense to the vessel. It was plainly an agreement designed to transfer responsibility for these particular functions from the shipowners to shippers, charterers and consignees. The cargo owners no longer contest the decisions at first instance and in the Court of Appeal to this effect.

7. Both the bills of lading and the charterparty are governed by English law.

II. The claims.

8. In February 1998 the cargo was discharged at Motril. The shippers and consignees alleged that the cargo was damaged by rough handling during loading and/or discharging, and/or inadequate stowage due to failure to provide dunnage, failure to secure the coils and/or stacking them so that the bottom layers were excessively compressed.

III. The preliminary issue.

9. Title to sue has been assumed to vest in either the shippers or consignees. On the assumption that the allegations of the claimants are correct the parties agreed to the trial of a preliminary issue. The principal issue was whether the agreement in the charterparty (evidenced by clauses 3 and 17), which purported to transfer responsibility for loading, stowage and discharge from the shipowners to shippers, charterers and consignees, is invalidated by article III, r. 8. That is now the only issue before the House.

IV. The Submissions in Outline.

10. The dispute before the House is between shipowners, shippers and consignees: the voyage charterers did not take part in the appeal. The principal submissions of cargo owners (the appellants) were as follows. First, that article III, r. 2 of the Hague and Hague-Visby Rules imposed upon the shipowners as carrier of the goods under the bills of lading the duty to perform the functions described therein and the responsibility for the proper and careful performance of those functions (which involve loading, stowing and discharging the cargo). Secondly, that the agreement evidenced by clauses 3 and 17 of the charterparty transferring responsibility for handling, stowing and discharging the cargo is invalidated by article III, r. 8. Recognising that the decision of the House in *Renton* stands in the way of this argument, counsel for cargo owners invite the House to depart from that decision under the *Practice Statement (Judicial Precedent)* [1966] 1 WLR 1234. The shipowners' position is straightforward. While they accept that the whole contract of carriage is subject to the Hague-Visby Rules, they contend that the extent to which loading, stowage and discharging are brought within the carrier's obligations may properly be a matter for agreement between the parties. They say that properly construed the Rules do not invalidate an agreement transferring the responsibility of the shipowners for those functions to the shipper, charterer or consignee. In any event, they rely on the binding authority of the decision of the House in the *Renton* case to that effect.

V. The Existing Rule.

11. Under the common law the duty to load, stow and discharge the cargo *prima facie* rested on shipowners but it could be transferred by agreement to cargo interests. In *Pyrene v Scindia Navigation* [1954] 2 QB 402 Devlin J observed that the effect of article III, r. 2 of the Hague-Visby Rules was not to override freedom of contract to reallocate responsibility for the functions described in that rule. He said (417-418):

> "The phrase 'shall properly and carefully load' may mean that the carrier shall load and that he shall do it properly and carefully: or that he shall do whatever loading he does properly and carefully. The former interpretation perhaps fits the language more closely, but the latter may be more consistent with the object of the Rules. Their object, as it

> is put, I think, correctly in *Carver's Carriage of Goods by Sea*, 9th ed (1952), p 186, is to define not the scope of the contract service but the terms on which that service is to be performed. The extent to which the carrier has to undertake the loading of the vessel may depend not only upon different systems of law but upon the custom and practice of the port and the nature of the cargo. It is difficult to believe that the Rules were intended to impose a universal rigidity in this respect, or to deny freedom of contract to the carrier. The carrier is practically bound to play some part in the loading and discharging, so that both operations are naturally included in those covered by the contract of carriage. But I see no reason why the Rules should not leave the parties free to determine by their own contract the part which each has to play. On this view the whole contract of carriage is subject to the Rules, but the extent to which loading and discharging are brought within the carrier's obligations is left to the parties themselves to decide."

It is true that, in the language of precedent, this was an *obiter dictum*. But it was a carefully considered statement by one of the most distinguished commercial judges of the twentieth century, who believed firmly in the principle that it is the task of a judge to administer the law as it stands: see the entry for Lord Devlin, written by Professor Tony Honoré, in the *Oxford Dictionary of National Biography*, 2004, Vol 15, pp 985-988.

12. Two years after the decision in the *Pyrene* the very same point came before the House for decision in the *Renton* case. In the present case the Court of Appeal held (at paras 33 and 34 of the judgment of Tuckey LJ), and it is now common ground, that the *ratio decindendi* of the House in *Renton*, is to the effect that an agreement transferring responsibility for loading, stowage and discharge of the cargo from the shipowners to shippers, charterers and consignees is not invalidated by article III, r. 8. In these circumstances it is not necessary to analyse the facts of the case and the detailed treatment of the issues by the Law Lords sitting in *Renton*. Such an analysis is to be found in the lucid judgments of the judge (at paras. 49-55) and Tuckey LJ in the Court of Appeal (at paras 30-34). The majority in *Renton* consisted of Lord Morton of Henryton, Lord Cohen and Lord Somervell of Harrow. Lord Morton of Henryton cited the observation of Devlin J in *Pyrene* in full: at 169 and 170. He expressed agreement with it but added that "not only is the construction approved by Devlin J more consistent with the

object of the rules, but it is also the more natural construction of the language": at 170. Lord Cohen agreed with Lord Morton of Henryton: at 173. Lord Somervell of Harrow referred to article III, r. 2, and observed (at 174):

> "It is, in my opinion, directed and only directed to the manner in which the obligations undertaken are to be carried out. Subject to the later provisions, it prohibits the shipowner from contracting out of liability for doing what he undertakes properly and with care. This question was considered by Devlin J in *Pyrene Co Ltd v Scindia Navigation Company Limited* in relation to the words 'shall properly and carefully load'. I agree with his statement, which has already been cited."

Thus there was a clear *ratio decidendi* in *Renton.* That Viscount Kilmuir L.C. and Lord Tucker decided *Renton* on a different ground does not detract from the controlling force of the decision.

13. This view has consistently been applied in subsequent cases: see *The Ciechocinek* [1976] 1 Lloyds Rep 489, 493 per Lord Denning MR; *The Arawa* [1977] 2 Lloyd's Rep 416, 424-425, per Brandon J; *The Filikos* [1981] 2 Lloyd's Rep 555, 557-558, per Lloyd J; *The Strathnewton* [1983] 1 Lloyd's Rep 219, 222, per Kerr LJ; *The Panaghia Tinnou* [1986] 2 Lloyd's Rep 586, 589 (my judgment); *The Holstencruiser* [1992] 2 Lloyd's Rep 378, 380, per Hobhouse J; *The Coral* [1993] 1 Lloyd's Rep 1, 5, per Beldam LJ.

14. The existing position is summarised in the 20th edition of *Scrutton on Charterparties and Bills of Lading,* 1996, as follows [at 430-431]:

> "The whole contract of carriage is subject to the Rules, but the extent to which loading and discharging are brought within the carrier's obligations is left to the parties themselves to decide. Thus, if the carrier has agreed to load, stow or discharge the cargo, he must do so properly and carefully, subject to any protection which he may enjoy under Article IV. But the Rules do not invalidate an agreement transferring the responsibility for these operations to the shipper, charterer or consignee."

In my view this is an accurate statement of the existing law.

VI. The course of the argument in the House.

15. Before considering the arguments on interpretation, it is necessary to draw attention to the fact that the rule in *Renton* has stood for almost fifty years. It is probable that an enormous number of transactions have taken place on the assumption that *Renton* represents the law. Moreover, it seems likely that there are many open transactions, not yet finalised by judgment, arbitration award or settlement, which were concluded in reliance on the rule in *Renton*. Against this background, counsel for cargo owners invited the House to rule that *Renton* was wrongly decided. Even if exceptionally a prospective overruling of a decision of the House could be permitted, it would be of no use to cargo owners: compare *R v Governor of Brockhill Prison, Ex p Evans (No 2)* [2001] 2 AC 19, at 27B (per Lord Slynn of Hadley); 27E (per Lord Browne-Wilkinson; at 29F, (my opinion); at 36E (per Lord Hope of Craighead); at 48H-49C (per Lord Hobhouse of Woodborough). Cargo owners ask the House not to regard the impact of past transactions as a factor of significance and to decide retrospectively that *Renton* was wrongly decided in 1957.

16. Against this background an observation in *Vallejo v Wheeler* (1774) 1 Cowp 143 is apposite. Lord Mansfield observed (at 153):

> "In all mercantile transactions the great object should be certainty: and therefore, it is of more consequence that a rule should be certain, than whether the rule is established one way or the other. Because speculators in trade then know what ground to go upon."

Recently, in Homburg *Houtimport BV and Others v Agrosin Private Limited and Another* [2004] 1 AC 715, para 13, at 738, Lord Bingham of Cornhill reaffirmed in an international trade law case the importance of this consideration. That is, of course, not to say that the House might not be persuaded under the Practice Statement to depart from an earlier decision where that decision has been demonstrated to work unsatisfactorily in the market place and to produce manifestly unjust results: see *R v G and Another* [2004] 1 AC 1034, para 35, at 1056, per

Lord Bingham of Cornhill. But, in a case such as the present, if that high threshold requirement is not satisfied, it would not be proper to reverse the earlier decision.

17. At the end of the oral argument of counsel for the appellants, the House was satisfied that it had not been shown that the *Renton* decision worked unsatisfactorily and led to unjust results. Despite the careful and helpful arguments placed before the House by counsel for cargo owners, the House decided that it was unnecessary to call on counsel for the shipowners to address the House on any aspect of the case. I will explain my reasons for agreeing to this decision more fully later in this judgment. But it is necessary to set out the shape of the arguments on interpretation. It is, however, necessary to emphasise again that the House did not hear any oral argument on behalf of the shipowners. But the House did have the benefit of studying in advance the excellent printed cases prepared by both sides.

VII. The Interpretation of the Rules.

The Text.

18. In interpreting article III, r. 2, the starting point is the language of the text. Counsel for cargo owners was assisted by the fact that in *Pyrene* Devlin J accepted that the phrase "shall properly and carefully load" fits more closely the interpretation which he rejected. Moreover, at first instance the judge similarly accepted that this is so: [2003] 2 Lloyds Rep 87, para 62, at 97. It is true that in *Renton* Lord Morton of Henryton (with whom Lord Cohen agreed) thought that Lord Devlin's interpretation was also supported by the natural construction of the language. I would not accept this part of the reasoning in *Renton*. Two points in particular made by counsel for cargo owners militate against it. First, the language appears to provide for a single standard of carrying out properly and carefully not only loading and discharging but also caring for the goods carried. Devlin J certainly did not suggest that the owner may by agreement under article III, r. 2, transfer responsibility for caring for the cargo during the voyage. Secondly, the French text of the Hague Rules and Hague-Visby Rules provide as follows:

> "Le transporteur sous réserve des dispositions de l'article 4, procédera de façon appropriée et soigneuse au chargement, à la manutention, à l'arrimage, au transport, à

> la garde, aux soins et au déchargement des marchandises transporteés."
>
> [My emphasis]

In context the word "procédera" means "to undertake": *Robert-Collins, Dictionnaire Français~Anglais, Anglais~Français*, s.v. "procéder", p 560; *Le Nouveau Petit Robert*, s.v. "procéder." The French text is the authoritative language of the Hague Rules and the English and French texts are equally authentic in the case of the Hague-Visby Rules. The French text tends to support the interpretation put forward by cargo owners. (It is to be noted that in *Pyrene* Lord Devlin referred to the French text: at 421.) For my part, the concession of Devlin J was realistic. It follows that the common thread and ratio decidendi of the majority judgments in *Renton* is a purposive rather than literal reading of article III, r. 2.

19. Devlin J did not base his interpretation on linguistic matters. He relied on the broad object of the Rules. It has often been explained that the Hague Rules and Hague-Visby Rules represented a pragmatic compromise between the interests of owners, shippers and consignees. The Hague Rules were designed to achieve a part harmonisation of the diverse laws of trading nations. It achieved this by regulating freedom to contract on certain topics only: *Chandris v Isbrandtsen-Moller Co Inc* [1951] 1 KB 240, at 247. In interpreting article III, r. 2, its purpose and context is all important. For example, it is obvious that the obligation to make the ship seaworthy under article III, r. 1, is a fundamental obligation which the owner cannot transfer to another. The Rules impose an inescapable personal obligation: *Riverstone Meat Co Pty Ltd v Lancashire Shipping Co Ltd* [1961] AC 807. On the other hand, article III, r. 2, provides for functions some of which (although very important) are of a less fundamental order e.g. loading, stowage and discharge of the cargo. Those who are not attracted to literal interpretations of an international Convention, reliant principally on linguistic matters, may find it entirely possible to conclude that the context and purpose of article III, r. 2, would not be undermined by permitting owners to transfer responsibility for loading, stowage and discharge to shippers and others. Devlin J thought that it was difficult to believe that the Rules were intended to impose a universal rigidity about such essentially practical secondary functions. This reasoning is supported by the reality that in practice shore based stevedores rather than the crew load and discharge vessels. Who must pay them? This can not unreasonably be viewed as an economic matter which the parties may determine by their specific contracts. A literal interpretation of the Rules no doubt leads to the conclusion that, where shippers and

consignees select and pay for stevedoring, as they often do in practice, cargo claimants may recover compensation from owners for the negligence of cargo owners or the negligence of their stevedores. The point was touched on by Greer J in *Brys & Gylsen v J and J Drysdale & Co* (1920) 4 Ll L Rep 24. He said, at p 25:

> "It would be an odd state of things if one were to hold that a shipowner who has no contract whatever with the stevedore, and who cannot say to the stevedore: You have broken your contract with me, and therefore I will not have you any longer in my vessel; and who has no control over what is to be paid to the stevedore, should be responsible for the failure of the stevedore to do his duty."

A purposive interpretation such as Devlin J preferred, which permits transfer of the responsibility for such functions to the party who selects and pay for the stevedores, avoids these unreasonable results. On balance I am satisfied that Devlin J adopted a principled and reasonable approach to the interpretation of article III, r. 2. And his interpretation was not based on any technical rules of English law: it was founded on a perspective relevant to the interests of maritime nations generally. Moreover, it may be right to say that where conflict arises between purely linguistic considerations and the broad purpose of an international convention, the latter should generally prevail. In my view the case for the adoption of Lord Devlin's interpretation, if it were proper to reconsider the matter afresh today, is formidable.

Travaux préparatoires.

20. With the aid of Michael F Sturley's *The Legislative History of the Carriage of Goods by Sea Act and the Travaux Préparatoires of the Hague Rules* (1990), Vols 1 to 3, counsel for cargo owners took the House on an extended tour of the travaux. It is, of course, a well established supplementary means of interpretation: article 32 of the Vienna Convention on the Law of Treaties, Vienna, 23 May 1969 (Cmnd 4140); *Fothergill v Monarch Airlines Limited* [1981] AC 251. It is, however, equally well settled that the travaux can only assist if, as Lord Wilberforce put it in *Fothergill*, they "clearly and indisputably point to a definite legislative intention": 278B. The general thrust of the travaux closely match the interpretation put forward by cargo owners. The judge recognised this. But he also pointed out that nowhere in the travaux is there any statement that article III, r. 2, prevents an owner and

merchants from reallocating responsibility for loading, stowage and discharge of the cargo to the merchants. It is not enough to show that the draftsmen proceeded on the basis of the normal common law rule that loading stowage and discharging is the duty of the shipowner, without considering the effect of different contractual arrangements. If the issue had been directly confronted by draftsmen, it is far from obvious that they would have concluded that a shipowner should be liable to cargo owners for damage caused by cargo owners themselves when they undertook the relevant duty and did it badly. In these circumstances the judge held that the requirements enunciated in *Fothergill* were not satisfied. In my view he was entirely right to do so. The travaux cannot therefore assist the argument of the cargo owners.

The views of the textbook writers.

21. Since the decision of the House in *Renton* in 1956 no English textbook writers have challenged its correctness. The editors of *Scrutton on Charterperties*, 20th ed. 1996, at pages 430-431 treat it as correctly stating the law; the editors of *Contracts for the Carriage of Goods By Land, Sea and Air* 1993-2000, Lloyds, para 1.1.3.5, is to the same effect; the editors of *Carver on Bills of Lading* 2001 discuss the rival arguments (at paras 9-114 - 9-115) but do not argue that *Renton* should be reversed.

The decisions in foreign jurisdictions.

22. Counsel placed great reliance on decisions of the Second Circuit Court of Appeal in *Associated Metals and Minerals Corp v M/V The Arktis Sky* 978 F.2d 47 (2nd Cir 1992) and the Fifth Circuit Court of Appeal in *Tubacex Inc v M/V Risan* 45 F 3rd 951 (5th Cir 1995) in which it was held that loading, stowing and discharging under section 3(2) of the United States Carriage of Goods By Sea Act are "non delegable" duties of the carrier. In neither of these decisions is there any reference to the earlier English decisions in *Pyrene* and in *Renton*. Counsel for the cargo owners pointed out that *The Arktis Sky* has been followed at first instance in South Africa: *The Sea Joy* (1998) (1) SA 487 at 504. And with reference to *Tetley, Marine Cargo Claims*, 4th ed in preparation, chapter 25, at p21, he said that in France a shipowner may not contract out of responsibility for improper stowage by an F.I.O.S.T. clause.

23. On the other hand the *Renton* decision has been followed in Australia: *Shipping Corporation of India v Gamlen Chemical Co A/Asia Pty Ltd* (1980) 147 CLR 142 and *Hunter Grain Pty Ltd v Hyundai Merchant Marine Co Ltd* (1993) 117 ALR 507; compare, however, doubts expressed in *Nikolay Malakhov Shipping Co Ltd v SEAS Sapfor Ltd* (1998) 44 NS WLR 371, per Handley JA, at 380, Sheller JA at 387-388, and Cole JA, at 418. Similarly, New Zealand courts have applied *Renton: International Ore & Fertilizer Corp v East Coast Fertiliser Co Ltd* [1987] 1 NZLR 9. In Pakistan the English rule has been adopted: see e.g. *East and West Steamship Co v Hossain Brothers* (1968) 20 PLD SC 15. In India (the country of shipment in the present case) the English rule is followed: see *The New India Assurance Co Ltd v M/S Splosna Plovba* (1986) AIR Ker 176 (Court: Balakrishna, Menon and K Sukumaran JJ).

24. Internationally there is no dominant view. The weight of opinion in foreign jurisdictions is fairly evenly divided. The argument that the law as enunciated in *Renton* ought to be brought into line with subsequently decided United States decisions, which did not address the arguments in *Pyrene* and *Renton,* is rather weak. This plank of the cargo owners case cannot therefore materially assist in the challenge to the decision of the House in *Renton.*

Third party bill of lading holders.

25. It is true, as counsel for cargo interests emphasised, that third party bill of lading holders will in practice often not have seen the charterparty or had advance notice of relevant charterparty clauses. This is a point of some substance. It is, however, an inevitable risk of international trade and cannot affect the correct interpretation of article III, r. 2.

No concluded view.

26. Everything ultimately turns on what is the best contextual interpretation of article III, r. 2. I have already discussed this matter without venturing a concluded view.

VIII. Is a departure from Renton justified?

27. It is now necessary to return to the question whether, if it is to be assumed that the cargo owners interpretation is correct, it would be right to depart from a decision of the House which has stood for nearly half a century. An opportunity arose in 1968 to improve the operation of the Hague Rules. But an international conference took the view that only limited changes were necessary: *Carver's, Carriage by Sea* 13th ed 1982, Vol 1, para 448. If the decision in *Renton* had worked unsatisfactorily in practice, one would have expected that to have emerged at the conference which led to the Protocol signed at Brussels on 23 February 1968 and the adoption of the Hague-Visby Rules. The interpretation assigned to article III, r. 2, by the English courts was an important part of the corpus of law governing the application of the Hague Rules. It would have been well known in shipping circles. Yet article III, r. 2, remained in unaltered form in the new Rules. The issue was not raised in any way: Anthony Diamond Q.C. *The Hague-Visby Rule,* 1978 *Lloyd's Maritime and Commercial Law Quarterly*, 225. If in the United Kingdom there had been dissatisfaction with the effect of the *Renton* decision, one would have expected British cargo interests to have raised it when Parliament considered the Bill which was to become the Carriage of Goods by Sea Act 1971. If invited to do so, Parliament could have considered whether *Renton* should be reversed. The matter was not raised at all. Instead, article III, r. 2, was re-enacted in unaltered form: see for the best account of the position placed before Parliament the speech of Lord Diplock, *Hansard (HL Debates)*, 25 March 1971, cols 1028-1034. If there had been dissatisfaction with the impact of the *Renton* decision, one would have expected it to have been a matter of discussion in trade journals and publications in the United Kingdom. There have been no such criticisms. And since the decision in *Renton* no academic writers have argued that *Renton* should be reversed.

28. Since *Renton* was decided shipowners, charterers, shippers and consignees have acted on the basis that it correctly stated the law. It has formed the basis of countless bills of lading, voyage charterparties and time charterparties. Charterparties would frequently have incorporated the Hague or Hague-Visby Rules on the express basis that the shipowner transferred responsibility for stowage of cargo to cargo interests. Similarly, insurances have been placed, Protection and Indemnity Club Rules have been drafted, and the Inter-Club New York Produce Exchange Agreement concluded (see *Wilford Coghlin and Kimball, Time Charters*, 5th ed, 2003, at para 20-39), on the basis that *Renton* accurately reflected the law. Risks would often have been assessed in reliance on the decision of the House in *Renton* as to how they should be

borne. But for the reliance on *Renton* it is likely that different freight rates and insurance premiums would sometimes have been charged. Moreover, at the very least there must be many outstanding disputes which would now be affected by a departure from *Renton*. After all F.I.O.S.T. clauses are in wide use. And cargo damage caused by loading, stowage and discharging is an everyday occurrence in maritime transport. The House has no idea how many such transactions are still open. There may be many.

29. For these reasons, even if I had been persuaded that the cargo owners' interpretation of the Hague and Hague-Visby Rules was correct, in my view the case against departing from *Renton* is nevertheless overwhelming.

30. There is, however, another factor. The operation of the Hague Rules and Hague-Visby Rules is under constant review. On 22 October 1990, at Geneva, the United Nations Conference on Trade and Development (UNCTAD) published *Charterparties: A Comparative Analysis*. With specific footnote references to *Pyrene* and *Renton* the report stated:

> "341. … charterparty terms relating to the loading, stowing and discharge of cargo may have a profound effect upon third party holders of charterparty bills of lading (even if the bill of lading is subject to the Hague and Hague-Visby Rules) where the words in the bill of lading incorporating the charter are widely framed. If the incorporating words in the bill of lading are sufficiently widely framed the third party bill of lading holder may find for example that he is unable to claim against the shipowner under the bill of lading for damage to cargo caused in the course of loading or stowing the cargo. This would be so if the charterparty contained terms removing from the shipowner the responsibility for loading and stowing. These terms, if there was a wide incorporating clause, would be read as part of the bill of lading contract. They would not be nullified by the requirements of article [III], r. 2 of the Hague Rules that 'the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried' because according to English law those words do not define the scope of the contract service but the terms upon which the agreed service is to be performed.

> 342. In regard to loading, stowage or discharging, the Hague Rules, on these authorities, only impose obligations if the shipowner has contractually undertaken to perform those obligations. If under the terms of a charterparty the shipowner is relieved to that extent of the obligations of performance, the shipowner will also be relieved of responsibility for loading, stowing or discharging as against a third party bill of lading holder, always providing that the bill of lading and charter contain sufficiently widely drawn clauses. This will be so even if the bill is subject to the Hague-Visby Rules: and even if the third party bill of lading holder has neither seen the charterparty referred to, nor has any advance notice of the relevant charterparty clauses.
>
> 343. Other charterparty clauses which may affect a third party bill of lading holder particularly are law clauses, lay time and demurrage clauses and lien clauses."

The report showed in successive paragraphs how the position of third party bill of lading holders is part of a larger picture affecting, for example, lay time and demurrage clauses and lien clauses: paras 346 and 347. The report concluded:

> "354. It can be seen from the foregoing that charterparty terms can have an impact upon third party bill of lading holders in several important respects and it is suggested that in considering in any standardisation, harmonisation or improvement of charterparty terms and the necessity for international legislative action, due account should be taken of the interests of third party bill of lading holders as well as those of charterers and shipowners."

That is, of course, the way in which such problems affecting international trade law are best addressed.

31. The United Nations Commission on International Trade Law (UNCITRAL) is currently undertaking a revision of the rules governing the carriage of goods by sea. This exercise involves a large scale examination of the operation of the Hague-Visby Rules. It apparently extends to article III, r. 2. It will take into account representations from all interested groups, including shipowners, charterers, cargo owners

and insurers. By itself this factor makes it singularly inappropriate to re-examine the *Renton* decision now.

IX. Conclusion.

32. I would express no concluded view on the issue of the interpretation of article III, r. 2. I would refuse to depart from the *Renton* decision. I would dismiss the appeal.

LORD HOFFMANN

My Lords,

33. I have had the advantage of reading in draft the speech of my noble and learned friend Lord Steyn. For the reasons he gives, with which I agree, I would dismiss this appeal.

LORD SCOTT OF FOSCOTE

My Lords,

34. I have had the advantage of reading the opinion prepared by my noble and learned friend Lord Steyn. For the reasons he has given, with which I agree and to which I have nothing to add, I too would dismiss this appeal.