obligation upon the parties to co-operate in proceeding with the reference to arbitration, as was held to exist by the majority of your Lordships' House in the *Bremer Vulkan* case.

It is for these reasons, as I understand it, that your Lordships declined to grant to the charterers leave to pursue any of the new points which Mr. Boyd sought to raise.

I would therefore dismiss the appeal. I wish however to add a footnote. There has been clearly expressed, by all members of the Court of Appeal in the present case, grave concern about the law as it now stands with regard to arbitrations which have been allowed to go to sleep for many years; and it is plain that, in so expressing themselves, they were expressing a concern felt generally in the City of London. It may however be that the problem could be dealt with most expeditously, and most clearly, by legislation conferring a power to dismiss claims in arbitrations for want of prosecution, similar to the power which now exists to dismiss similar actions for want of prosecution in the Courts. If that is right, then, in the interests of all concerned, the sooner the matter is brought before the legislature for consideration, the better.

COURT OF APPEAL

Feb. 22 and 23, 1988

MARC RICH & CO. LTD.
v.
TOURLOTI COMPANIA NAVIERA S.A.

(THE "KALLIOPI A")

Before Lord Justice SLADE
Lord Justice STAUGHTON and
Sir ROUALEYN CUMMING-BRUCE

Charter-party (Voyage) — Demurrage — Vessel anchored at pilot station due to non-availability of discharging berth — Laytime expired while vessel at pilot station — Whether charterers' liability for demurrage excluded by "restraint of princes" clause.

By a charter-party dated May 24, 1983, the owners let their vessel *Kalliopi A* to the charterers for the carriage of a cargo of steel scrap from Rotterdam to —

> . . . one safe berth Bombay or so near thereto as she may safely get and lie always afloat and there deliver the cargo.

Clause 15 entitled the vessel to give notice of readiness to discharge whether in berth or not and cl. 13 provided that cargo was to be discharged at the specified rate per weather working day of 24 consecutive hours and that if longer detained charterers were to pay demurrage at the rate stipulated in cl. 4. The charter further provided inter alia by cl. 36 that:

> The act of God, restraint of Princes and Rulers . . . and all and every other unavoidable hindrances which may prevent the . . . discharging . . . during the . . . voyage always mutually [excepted].

On June 30, 1983, the master tendered notice of readiness to discharge. The vessel was then within the port of Bombay and ready to discharge but owing to the non-availability of any discharging berth she was anchored at the pilot station. The time allowed for discharging expired on Aug. 20, and the vessel was moved to the inner anchorage on Sept. 6. Some cargo was discharged into lighters between Sept. 8 and 23. The vessel finally berthed on Sept. 28 and discharge was resumed on Sept. 29.

The owners claimed demurrage but the charterers contended that their liability to pay demurrage was excluded by cl. 36 in respect of the period until the vessel was able to proceed to her discharging berth on Sept. 28 apart from the time actually used for discharge into lighters between Sept. 8 and 23. The charterers argued that the congestion which prevented the vessel from reaching her berth was within the clause and the words "always mutually [excepted]" were words of exception which were clearly apt to exempt them from their liability to pay demurrage.

The dispute was referred to arbitration. The arbitrators rejected the submission that cl. 36 prevented laytime and demurrage from accruing and the charterers appealed.

———*Held*, by Q.B. (Com. Ct.) (EVANS, J.), that (1) cl. 36 was in a standard form and in general terms and the relevant words "all and every other unavoidable hindrances which may prevent the . . . discharging . . . during the . . . voyage always mutually [excepted]" covered the congestion at the discharging port and were wide enough to include at least a well recognized kind of "hindrance" as congestion was; and there was no reason for holding that the clause only applied when the cause of delay was exceptional;

(2) the words 'unavoidable hindrances which may prevent the . . . discharging . . . always mutually [excepted]" was commercial shorthand for "neither party to be liable for the consequences of" and the charterers' liability for the consequences if discharging was prevented was measured in terms of demurrage; so the clause purported to exempt the charterers from their liability for a demurrage claim; the undertaking to pay demurrage (cl. 13) in respect of charterers' liability for failure to discharge within the laytime was qualified by the "mutual exceptions" in cl. 36;

(3) "prevent" meant that loading and discharge could not begin or continue for a time and the exception relieved the charterers from liability for demurrage which otherwise became due during that period; if this was correct there was no defence under cl. 36 in respect of periods when the vessel was able to discharge; the discharge while at anchor was merely the alternative destination and in the events that occurred the shipowners did not elect and were not entitled to treat it as the agreed discharging place which remained "one safe berth Bombay";

(4) cl. 36 exempted the charterers from liability for demurrage in respect of the period when congestion prevented discharge and delivery from taking place; this conclusion gave effect to the words of the clause without infringing the rule that any demurrage exception had to be clearly worded.

The owners appealed.

———*Held*, by C.A. (SLADE and STAUGHTON, L.JJ. and SIR ROUALEYN CUMMING-BRUCE), that (1) the interpretation of a charter-party could not be conducted solely on the basis of the ordinary English meaning of the words which the parties have used in their contract; regard had to be had to what the same or similar words or phrases had been held to mean in the past (*see* p. 105, col. 2);

(2) it was established law that once a vessel was on demurrage no exceptions would operate to prevent demurrage continuing to be payable unless the exceptions clause was clearly worded to that effect; there was no doubt that cl. 36 could have some effect apart from any liability the charterers may have for demurrage; and the words "mutually excepted" did not establish clearly that the charterers were not to be liable for demurrage if an unavoidable hindrance prevented discharge after the laytime had expired; the appeal would be allowed (*see* p. 106, cols. 1 and 2; p. 107, cols. 1 and 2);

———*The Dias*, [1978] 1 Lloyd's Rep. 325, considered.

The following cases were referred to in the judgment of Lord Justice Staughton:

Dias Compania Naviera S.A. v. Louis Dreyfus Corporation (The *Dias*) (H.L.) [1978] 1 Lloyd's Rep. 325; [1978] 1 W.L.R. 261;

Navrom v. Callitsis Ship Management S.A. (The *Radauti*), [1987] 2 Lloyd's Rep. 276;

N.V. Reederij Amsterdam v. President of India (The *Amstelmolen*), (C.A.) [1961] 2 Lloyd's Rep. 1;

Pagnan (R) & Fratelli v. Finagrain Compagnie Commerciale Agricole et Financiere S.A. (The *Adolf Leonhardt*), [1986] 2 Lloyd's Rep. 395;

President of India v. N.G. Livanos Maritime Co. (The *John Michalos*), [1987] 2 Lloyd's Rep. 188;

Superfos Chartering A/S v. N.B.R. (London) Ltd. (The *Saturnia*) (C.A.) [1987] 2 Lloyd's Rep. 43;

Union of India v. Compania Naviera Aeolus S.A. (The *Spalmatori*) (H.L.) [1962] 2 Lloyd's Rep. 175; [1964] A.C. 868.

This was an appeal by the owners, Tourloti Compania Naviera S.A. from the decision of Mr. Justice Evans ([1987] 2 Lloyd's Rep. 263) allowing the appeal of the charterers Marc Rich & Co. Ltd. against the arbitration award in which the arbitrators rejected the charterers' submission that cl. 36 prevented demurrage from accruing.

Mr. D. Mildon (instructed by Messrs. Holman Fenwick & Willan) for the owners; Mr. Michael Collins (now Q.C.) (instructed by Messrs. Shaw & Croft) for the charterers.

The further facts are stated in the judgment of Lord Justice Staughton.

Judgment was reserved.

Friday, May 18, 1988

JUDGMENT

Lord Justice STAUGHTON: The motor vessel *Kalliopi A* was chartered by her owners, Tourloti Compania Naviera S.A., to Marc Rich & Co. Ltd. on May 24, 1983 for the carriage of

a cargo of shredded and baled scrap from Rotterdam to Bombay. She arrived at Bombay pilot station on June 30, 1983. But it was not until Nov. 26, 1983 that discharge was completed. The arbitrators concluded that the vessel was on demurrage for 98 days two hours and two minutes. At $4500 per day that resulted in a liability of the charterers amounting to $441,381.24. The cause of that expensive period was for the most part commercial congestion; in other words, the port was occupied by other vessels, and *Kalliopi A* had to wait her turn. There had been two payments on account, and there were also small adjustments for freight due and commission. In the result the arbitrators awarded the sum of $323,788.68 to the owners.

On appeal pursuant to the Arbitration Act, 1979, Mr. Justice Evans held that the sum due in respect of demurrage was very much less. He varied the award so that the principal amount due to the owners became $175,539.45 (*see* [1987] 2 Lloyd's Rep. 263). Against that order the owners now appeal.

The relevant provisions of the charter-party are as follows:

> (1) DESTINATION
>
> One safe berth Bombay or so near thereto as she may safely get and lie always afloat and there deliver the cargo.
>
> (4) DEMURRAGE
>
> Demurrage, if incurred, to be paid by Charterers at the rate $4500 per day or pro-rata for any part of a day, . . .
>
> (13) . . . Cargo is to be discharged at the rate of 1000 mt per weather working day of 24 consecutive hours, Sundays and holidays excluded. Even if used. If longer detained, Charterers to pay demurrage at the rate stipulated in Clause 4 . . . If sooner dispatched, Owners to pay despatch at the rate of $2250 currency per day or pro-rata for part of a day on laytime saved . . .
>
> (14) . . . at discharge port time from 1200 hrs Saturday until 0800 hours Monday, not to count . . .
>
> (15) At each port, time to count 8 am first working day after due notice given and accepted. Notice of readiness to be given in writing or by cable WIBON — within office hours, . . .
>
> (36) The act of God, restraint of Princes and Rulers, The Country's enemies fire, floods, droughts and all and every dangers and accidents of the seas, rivers and navigation of whatsoever nature and kind, riots, strikes or stoppages at seaboard and all and every other unavoidable hindrances which may prevent the loading and discharging and delivery during the said voyage always mutually accepted.

It is common ground, and almost the only thing that is common ground about cl. 36, that "accepted" should be taken as reading "excepted".

Clause 37 begins:

> Neither Charterer nor Owners shall be responsible for the consequences of any strikes or lock-outs, preventing or delaying the fulfilment of any obligations under this contract . . .

There then follow detailed provisions which I need not set out.

The entire text of the charter-party appears to have been typed specially for this contract. Thus although a number of its provisions appear familiar, and to have been derived from standard forms, one cannot tell merely from looking at the document how much of it was devised by the parties to this appeal or their brokers, and how much was incorporated from some other source.

The facts

These are in short compass, so far as material to this appeal. As already stated, the vessel arrived at Bombay pilot station on June 30, 1983. Notice of readiness was then given. It is agreed that the laytime allowed for discharging expired on Aug. 20, 1983. Since the cargo consisted of 18,288 tonnes and the time allowed was to be calculated at 1000 tonnes per day, that seems surprising. It is explained in part by a small dispute as to whether the vessel qualified to give notice of readiness on June 30, with which we are not concerned; and there must have been a large number of Saturdays, Sundays, holidays or other excepted periods.

By Aug. 20 none of the cargo had been discharged; the vessel was still at anchorage waiting for a berth, because all berths in the port were occupied by other vessels. On Sept. 6 she was brought to the inner anchorage, and on Sept. 8 discharge into barges in stream commenced. That continued until Sept. 23. Work did not take place round the clock, because discharge in stream was only permitted during daylight hours.

At last, on Sept. 28, the effects of congestion ended so far as *Kalliopi A* was concerned, and she obtained a berth. But that was not the end of her troubles. From Oct. 20 to Nov. 3 there was a strike by supervisory and clerical grades which prevented stevedores working. The arbi-

trators held that the charterers were nevertheless liable for the delay during that period, despite cl. 37, because the vessel was already on demurrage. There has been no appeal from that aspect of the arbitrators' award.

Discharge was completed, as I have already said, on Nov. 26, 1983.

There are two findings in the award as to the prevalence of congestion in Bombay. The first is in par. 13:

> . . . this congestion was by no meaning unusual at Bombay at this time.

The second is in par. 15:

> . . . we accept and find that the congestion was foreseen.

The issue

This appeal is concerned with the impact of cl. 36 and the facts which I have set out on the charterers' obligation to pay demurrage if discharge was not completed by Aug. 20, 1983. It is said that congestion at Bombay was an unavoidable hindrance which prevented discharge of the cargo for a time, and was therefore excepted. But the charterers do not contend that it operated as an exception whilst laytime was running. They agree that the laytime expired on Aug. 20, although no discharging had taken place since the vessel's arrival at Bombay. What they do say is that, thereafter, they are excused from any liability to pay demurrage in respect of periods when the vessel was still delayed by congestion. Those periods are from Aug. 21 to Sept. 5, part of the time between Sept. 6 and 23 (that is to say the hours during that period when the vessel was not actually discharging in stream) and Sept. 24 to 27. For simplicity I have used dates rather than precise times in setting out the charterers' contention.

Mr. Collins for the charterers explained why their argument was framed in that limited way. He said that there was nothing in cl. 36 to provide that laytime should not count during the incidence of the various perils which it mentioned; the clause was concerned only with the effect of those events if they occurred when the charterers were already in breach of contract, because the vessel was already on demurrage. This approach had the advantage, for Mr. Collins, that it gave some effect to the words "whether in berth or not" represented by the acronym "WIBON" in cl. 15; laytime began to count and continued running when the vessel arrived at the pilot station and gave notice of readiness, despite the fact that she was prevented by congestion from obtaining a berth. It was only after the laytime had expired and the charterers were in breach of contract that the exception of unavoidable hindrances became operative.

I have set out at some length the nature of the charterers' argument and the grounds for its presentation in that form, for two reasons. First, this Court has not had to consider, and has not considered, whether the words "mutually excepted" in cl. 36 may mean that the specified perils do interrupt the running of laytime. Secondly, the Court has not had to consider whether, if the clause does prima facie have that effect, it can still do so where the peril in question is commercial congestion and the charter-party contains the words "whether in berth or not". The decisions of this Court in *N. V. Reederij Amsterdam v. President of India (The Amstelmolen)*, [1961] 2 Lloyd's Rep. 1, and at first instance in *R. Pagnan & Fratelli v. Finagrain Compagnie Commerciale Agricole et Financiere S.A. (The Adolf Leonhardt)*, [1986] 2 Lloyd's Rep. 395 and *Navrom v. Callitsis Ship Management S.A. (The Radauti)*, [1987] 2 Lloyd's Rep. 276, might have been relevant to that problem. But it has not arisen on this appeal, at any rate in that form.

The proceedings

The arbitrators (Mr. Alec Kazantzis, Mr. Clifford Clark M.C. and Mr. Angus Glennie) decided in favour of the owners. They accepted that commercial congestion came within the expression "unavoidable hindrances", but continued as follows in par. 14 of their reasons:

> . . . we were nonetheless unable to accept the submissions by the Respondents that this clause prevented laytime and demurrage running whilst the vessel was waiting for a berth due to congestion. Our reason for saying this is that the scheme of the charterparty clearly appears to contemplate that the risk of congestion is upon the Respondents. Clause 15 of the charterparty provides that notice of readiness is to be given whether in berth or not, whether in port or not. We think it would be inconsistent with this provision to construe clause 36 as preventing laytime running and therefore relieving the Respondents from any financial responsibility in the event that congestion prevents the vessel berthing. The very purpose of the WIBON provision is to the contrary. In arriving at this conclusion we are conscious that in the *Amstelmolen* (supra) to which we were referred the Court of Appeal held that the exceptions clause including the word "obstructions"covered congestion in the port and excepted the char-

terers from liability for demurrage notwithstanding the fact that that charterparty also was expressed in terms of time running "whether in berth or not", but there are differences between this case and that (the *Amstelmolen* being concerned with a clause excepting liability for demurrage) and we think it would be quite contrary to the parties intention if in the present case laytime did not run and charterers were immune from any financial burden simply because congestion, the very reason for the incorporation of the "whether in berth or not" provision, prevented the vessel berthing.

It will be observed that the charterers' argument appeared to the arbitrators to be that neither laytime nor demurrage would run while one of the perils in cl. 36 operated. That was not the argument put before Mr. Justice Evans on appeal or before this Court. It is said that the arbitrators misunderstood the charterers' argument. However that may be, I repeat that this Court has not been asked to consider an argument in that form, or to rule upon the arbitrators' conclusion as set out in par. 14 of their reasons.

Mr. Justice Evans reached a different result. The essence of his reasoning is set out in this passage from his judgment:

> The central issue is whether cl. 36 operates so as to exclude the charterers' liability for demurrage. To have that effect the clause must be clearly intended to do so. Short of identifying "demurrage" by name, the words are clear:
>
> > unavoidable hindrances (sc. congestion) which may prevent the . . . discharging . . . always mutually excepted.
>
> This must be commercial shorthand for "neither party to be liable for the consequences of", and the charterers' liability for the consequences if discharging is prevented is measured in terms of demurrage. So the clause purports to exempt charterers from their liability for what will be put forward as a demurrage claim. Such a claim arises under the laytime and demurrage provisions of cll. 4 and 13–15. Clause 36 is in direct conflict with the express obligations in cl. 13: "If longer detained, charterers to pay demurrage . . . ", although it is not otherwise inconsistent with the laytime and discharge obligations provided by cll. 13–15. In my judgment, reading the charter-party as a whole, it is permissible to give effect to cl. 36 as an exception to the liability otherwise imposed by cl. 13 (and there could be cases in which the shipowners would seek to rely upon it for the same purpose). Expressing the same conclusion in different words, the undertaking to pay demurrage (cl. 13) in respect of charterers' liability for failure to discharge within the laytime is qualified by the "mutual exceptions" in cl. 36.

Interpretation of cl. 36

The following five points were argued by Mr. Mildon on behalf of the owners:

(i) Commercial congestion is not an unavoidable hindrance within cl. 36, in the context of this charter-party.

(ii) The clause should not be construed so as to provide exemption in respect of causes which existed, and were known to exist, at the time when the contract was concluded.

(iii) Clause 36 is concerned only with causes which irrevocably prevent the fulfilment of obligations and not with those which merely delay fulfilment.

(iv) There was no unavoidable hindrance because the charterers might have discharged the vessel in stream completely, although they were not obliged to do so. (It seems that the owners did not contend before the arbitrators that the charterers were in law obliged to discharge the vessel in stream by reason of the words "so near thereto as she may safely get.")

(v) Clause 36 does not provide with sufficient clarity that the charterers are to be exempt from liability in respect of periods when the vessel is already on demurrage and they are already in breach of contract.

As is usual in such cases we were referred to quite a number of decisions on different contracts containing different wording. It must, I suppose, be accepted that the interpretation of a charter-party cannot be conducted solely on the basis of the ordinary English meaning of the words which the parties have used in their contract. Regard must be had to what the same or similar words or phrases have been held to mean in the past. As I ventured to say in *The Radauti* (at p. 278):

> Once a particular clause, phrase or word has received an authoritative interpretation from the Courts, it is thought right to follow that interpretation in other cases in the belief that the parties to subsequent contracts will have had it in mind when concluding their bargains or at least their legal advisers will have considered it when deciding whether to pursue a dispute subsequently.

But that reasoning provides, as it seems to me, a good argument for restraint on the part of the

Courts, or at any rate appellate Courts, when faced with a number of points, some of which are not essential in order to decide the case in question. Proliferation of obiter dicta in this field will not necessarily be of assistance to shipowners and charterers, or their brokers, when drawing up their contracts; nor will it necessarily help their legal advisers when they are deciding whether to litigate. But what it certainly will do is add a further tier to the great edifice of authority with which arbitrators and Judges are confronted in a case on the interpretation of a charter-party. In my judgment this appeal can and should be decided on the fifth and last of the owners' grounds alone; in those circumstances it is unnecessary and undesirable to say anything about grounds (i) and (iv).

It is established law that —

> When once a vessel is on demurrage no exceptions will operate to prevent demurrage continuing to be payable unless the exceptions clause is clearly worded so as to have that effect.

See Scrutton on Charterparties (19th edn.) p. 309, approved by the House of Lords in *Union of India v. Compania Naviera Aeolus S.A. (The Spalmatori)*, [1962] 2 Lloyd's Rep. 175; [1964] A.C. 868, and *Dias Compania Naviera S.A. v. Louis Dreyfus Corporation (The Dias)* [1978] 1 Lloyd's Rep. 325; [1978] 1 W.L.R. 261. This is a rule of construction, imposed upon the parties by law. It is sometimes expressed, not wholly accurately, in the shibboleth Once on demurrage, always on demurrage. It is described, by Lord Diplock in *The Dias* as but an example of the general principle that when a party is in breach of contract an ambiguous clause is no protection. One could be forgiven for thinking that the general principle has assumed special vigour when an exception is claimed to excuse liability for demurrage, to judge from some of the cases; but I take it as accurately expressed in the passage from Scrutton which has been cited.

Another justification for the rule is to be found in the judgment of Sir John Donaldson M.R. in *Superfos Chartering A/S v. N.B.R. (London) Ltd. (The Saturnia)*, [1987] 2 Lloyd's Rep. 43 at p. 46:

> It has a solid basis in common sense, namely that if — to take the example of this case — the ship had been discharged in the laytime, she would not have been in the port of Lagos when the strike occurred and so would have been completely unaffected by it.

See also Lord Hodson in *The Spalmatori* at pp. 190 and 896:

> . . . they have reached a position of vulnerability to delay caused by strikes which they would never have reached if they had complied with the terms of their contract.

That reasoning is not, as Mr. Justice Evans observed, applicable to this case. The vessel was already affected by congestion during the laytime; the charterers' breach in failing to discharge her within the laydays did not of itself cause her to be exposed to any subsequent peril. However, I do not regard that as a ground for holding the general rule to be inapplicable. Rather it is a consequence of the bizarre contract which the parties made — if indeed it is the effect of the contract which they did make — that there should be no relevant exceptions to the running of laytime, but should be exceptions which arguably may apply when the vessel is on demurrage.

There is little point in citing examples of cases where the rule has been applied, for the purpose of reaching a decision in this case. The charterers relied on the decision of Mr. Justice Leggatt in *President of India v. N.G. Livanos Maritime Co. (The John Michalos)*, [1987] 2 Lloyd's Rep. 188. There the charter-party contained two cll. (6 and 31) providing a long list of circumstances in which time should not count as laytime. A third clause (62) provided:

> Charterers shall not be liable for any delay in loading or discharging . . . caused in whole or in part by . . .

a whole host of perils. Mr. Justice Leggatt held that cl. 62 was clear enough to provide exemption when any of those perils occurred for the first time after the laydays had expired and the vessel was on demurrage.

That case is said to be the only one which Counsel can find where a clause which did not expressly mention demurrage has been held to provide such exemption. I do not find that consideration helpful to the determination of this appeal. One day there may be others, for the rule is as I have stated it and does not specify any particular form of words which must be used. Mr. Mildon is prepared to argue, if necessary that *The John Michalos* was wrongly decided. He does not need to do so, for cl. 62 in that case, and the context in which it was found, were different from cl. 36 and its context in this case.

So I return to cl. 36. There is no doubt that the clause can have some effect quite apart from any liability of the charterers for demurrage. Thus it would provide exemption if there

were a total ban on the export of scrap at the loading port, or on the import of scrap at the discharging port; or if all available scrap were destroyed by enemies, fire or flood. (I leave out of account the possibility that it may apply to partial prevention by the listed perils during the laytime, since Mr. Collins presents his argument on the basis that it does not.) No doubt the clause can also provide exemption for the owners in certain circumstances, subject to consideration of the owners responsibility clause elsewhere in the charter-party and the United States clause paramount which is incorporated. Then I ask myself whether the words "mutually excepted" show clearly that the charterers were not to be liable for demurrage if an unavoidable hindrance prevented discharge after the laytime had expired. My conclusion on that point can be expressed in the same words as those used by Lord Edmund-Davies in *The Dias* at pp. 329 and 265:

> the authorities . . . established that no exceptions clause will prevent demurrage from continuing to be payable unless such is clearly the effect of its language. The most that can be said about cl. 15 is that its language presents problems of interpretation of no little difficulty. But unless at the end of the day one can say that the meaning to be attached to the clause is clearly the one urged by the respondents, it follows that this appeal should succeed. To my way of thinking no such clarity has emerged, and I therefore concur in holding that the appeal should be allowed.

I would allow this appeal.

Sir ROUALEYN CUMMING-BRUCE: I have had the advantage of reading the judgments delivered by Lords Justices Slade and Staughton. I would allow the appeal for the reasons stated in their judgments.

Lord Justice SLADE: I am in full agreement with the judgment of Lord Justice Staughton and wish to add only these brief observations. It was part of the charterers' case, as presented by Mr. Collins, that *laytime* began to count and continued running against *the charterers* when *Kalliopi A* arrived at the pilot station at Bombay and gave notice of readiness, even though she was prevented by congestion from obtaining a berth. This submission had the merit of consistency with the WIBON provision in cl. 15 of the charter-party. In the light of it, however, I find it all the more difficult to accept Mr. Collins' argument that cl. 36 (which specifically mentions neither congestion nor demurrage) clearly demonstrates the respective parties' intentions effectively to impose on *the owners* the risk of delay occurring through congestion during the period of *demurrage*.

I agree that this appeal should be allowed. Subject to the submissions of Counsel, it seems to us that the proper order will be to set aside the judgment of Mr. Justice Evans and to restore the award of the arbitrator.

[*Order: Appeal allowed, with costs; leave to appeal to House of Lords refused.*]