COURT OF APPEAL

Mar. 18, 19 and 20, 1992

ELLIS SHIPPING CORPORATION
v.
VOEST ALPINE INTERTRADING

(THE "LEFTHERO")

Before Lord Justice LLOYD,
Lord Justice WOOLF and
Lord Justice RUSSELL

Charter-party (Voyage) — Demurrage — Exception clause — Iran-Iraq war — Vessel delayed by discharging at Bushire instead of charter-party destination — Owners entitled to rely on "restraint of princes" for non-delivery of vessel at charter-party destination — Whether clause protected charterers from liability for demurrage.

Charter-party (Voyage) — Freight — Right and true delivery of cargo — Vessel discharged at Bushire instead of charter-party destination — Whether right and true delivery of cargo — Whether owners entitled to balance of freight.

By a charter-party dated May 18, 1983 the owners let their vessel *Lefthero* to the charterers for a voyage from Lubeck and Hamburg to Bandar Khomeini with a cargo of about 25,000 tons of steel products. The charter provided inter alia:

> 6 . . . Time lost in waiting for berth to count as discharging laytime, whether in berth or not . . . Time to count from arrival pilot station Bandar Abbass until passing pilot station Bandar Abbass, except for actual steaming time to and from Bandar Khomeini which to be excluded from time counting). [The words underlined were typed additions to the printed form].
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> 19. Freight to be paid into Owners' account 90% within 5 banking days after signing and releasing of marked "freight prepaid" Bills of Lading less commissions. Balance payable after right and true delivery of the cargo . . . Freight deemed earned on signing Bills of Lading non-returnable ship and/or cargo lost or not lost . . .
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> 28. Neither the vessel nor the Owners nor Master nor the Charterers/Shippers/Receivers shall be responsible for any loss or damage or delay or failure in performing hereunder, arising or resulting from . . . restraint of princes . . .

At the time the Iran-Iraq war was well under way and the dangers of sailing in the upper reaches of the Gulf were well known. The vessel arrived at Bandar Abbas where there was a kind of convoy system in operation and on Aug. 6, 1983 the vessel joined a convoy to go to Bushire where the next available convoy for Bandar Khomeini was to be assembled. On Aug. 10 a pilot came on board to take the vessel to Bandar Khomeini but before the voyage began he refused to take the vessel further north.

There followed a long sequence of events and finally on Nov. 21, the parties agreed terms pursuant to which the cargo was to be discharged at Bushire.

In the event the cargo was discharged at Bushire rather than at the charter-party destination Bandar Khomeini and discharge at Bushire was completed on Feb. 3, 1984. The vessel's failure to discharge at Bandar Khomeini and the additional period of delay caused by discharging at Bushire rather than Bandar Khomeini formed the subject matter of claims and counter claims.

In the arbitration the charterers claimed damages for the shipowners' failure to deliver the cargo at Bandar Khomeini. The owners relied on the exception "restraint of princes" within the meaning of cl. 28. The owners also claimed the balance of freight contending that the balance was earned when the bills of lading were signed and became payable after discharge was completed at Bushire. The charterers argued that there never was right and true delivery of the cargo because that involved delivery at Bandar Khomeini and consequently the balance never became due.

The arbitrators held that just as the charterers' claim for damages could not succeed because of the restraint of princes clause the owners' demurrage claim could not succeed to the extent that demurrage accrued due to the same exception clause. The exception of "restraint of princes" protected the charterers from the consequences of the vessel not being permitted to proceed to Bandar Khomeini on Aug 10. Those consequences included the whole of the delay up to the commencement of discharge at Bushire. The arbitrators also found that if the cargo had been discharged at Bandar Khomeini discharge would have been completed by about Sept. 3, 1983 and the vessel would then have taken seven days to return to Bandar Abbas, and the owners were only entitled to recover demurrage to the extent that it would have been incurred if the vessel had been permitted to discharge at Bandar Khomeini. The arbitrators decided the freight claim in favour of the owners on the ground that although delivery at Bandar Khomeini was prevented by an excepted peril the cargo was thereafter discharged, by agreement, elsewhere.

The owners and the charterers appealed.

———*Held*, by Q.B. (Com. Ct.) (EVANS J.), that (1) the opening words of cl. 28 were wide enough to cover the charterers' obligations to load and discharge the cargo and to do so within the permitted laytime; they were also wide enough to cover the obligation to pay damages if those obligations were broken; the wording was so comprehensive that it was difficult to justify excluding from the clause the primary obligations which the charterers undertook;

(2) cl. 28 was intended to operate in conjunction with the laytime and demurrage provisions of the charter generally; the arbitrators reached the correct conclusion in holding that the charterers were

not responsible in demurrage for the additional delay caused by the operation of the "restraint of princes" as an excepted peril under cl. 28;

(3) the arbitrators found that there were poor facilities at Bushire which caused the discharging to take longer than it would have done at Bandar Khomeini; this was a foreseeable and likely consequence of the vessel discharging there and the owners' submission that the arbitrators' finding precluded the charterers' contention that the additional delay at Bushire was caused by the vessel's failure to give discharge at Bandar Khomeini, would be rejected;

(4) the contractual destination was Bandar Khomeini but discharge eventually took place at Bushire "by agreement" without prejudice to the charterers' claim that owners were in breach by failing to give discharge at Bandar Khomeini; since Bushire never became the contractual destination for the purposes of the charterers' claim the longer time taken to complete discharging there, was caused by the vessel's failure to reach Bandar Khomeini; the shipowners rather than the charterers were responsible for the additional period of delay;

(5) there was no justification for limiting the "freight earned" provision in cl. 19 to the 90 per cent payable early in the voyage; both parts (i.e. the 90 per cent. and the balance) became payable later than the freight was earned and the different times for payment did not provide a basis for including one but excluding the other from the "freight earned" provision; and if the parties intended the freight earned provision not to apply to the balance of freight they could easily have said so;

(6) the agreement to discharge at Bushire was accepted by both parties as being without prejudice to their respective claims for damages and demurrage; the arbitrators' finding that discharge took place "by agreement" at Bushire was not qualified by any further finding that the agreement was without prejudice or that the discharge was accepted under protest; the arbitrators found that Bushire became the agreed place for delivery of the goods and in those circumstances the charterers could not argue that "right and true delivery" never took place; the arbitrators' award would be upheld.

On appeal by the owners:

——*Held*, by C.A. (LLOYD, WOOLF, and RUSSELL, L.JJ.), that (1) on the face of it the words of cl. 28 were wide enough to cover delay by the charterers in discharging the vessel where the delay arose or resulted from restraint of princes; but in order to protect the charterers against liability for demurrage, the language of the exceptions clause must be clearly worded to that effect (*see* p. 112, col. 1; p. 114, col. 2);

(2) the general rule that once on demurrage always on demurrage was applicable even though the vessel was not already on demurrage when the peril operated (*see* p. 113, col. 2; p. 114, col. 1);

(3) the typed addition to cl. 6, under which time was to count from arrival at Bandar Abbas showed that the underlying objective of the parties was to compensate the owners for any delay due to the operation of the convoy system (*see* p. 113, col. 2);

(3) the submission by the charterers that the failure of the vessel to reach Bandar Khomeini was a "fault" of the owners and therefore laytime did not run during the continuance of that fault would be rejected; there was no question of removing the vessel from the service of the charterers; the vessel was at the disposal of the charterers throughout and the appeal would be allowed (*see* p. 114, cols. 1 and 2);

——*The Kalliopi A*, [1988] 2 Lloyd's Rep. 101, applied.

The following cases were referred to in the judgments.

Anna Ch., The [1987] 1 Lloyd's Rep. 266;

Dias, The (C.A.) [1978] 1 Lloyd's Rep. 325;

Islamic Republic of Iran Shipping Lines v. Ierax Shipping Co. of Panama (The *Forum Craftsman*), [1991] 1 Lloyd's Rep. 81;

Johs Stove, The [1984] 1 Lloyd's Rep. 38;

Kalliopi A, The (C.A.) [1988] 2 Lloyd's Rep. 101; [1987] 2 Lloyd's Rep. 263;

Nolisement (Owners) v. Bunge y Born, [1917] 1 K.B. 160;

Onisilos, The (C.A.) [1971] 2 Lloyd's Rep. 29;

Ropner Shipping Co. Ltd. and Cleeves Western Valleys Anthracite Collieries Ltd., *Re* [1927] 1 K.B. 879.

This was an appeal by the owners, Ellis Shipping Corporation against the decision of Mr. Justice Evans ([1991] 2 Lloyd's Rep. 599 given in favour of the charterers Voest Alpine Intertrading and holding in effect that the charterers were not liable for the delay in discharging the vessel.

Mr. Timothy Young (instructed by Messrs. Ince & Co.) for the owners; Mr. Richard Siberry, Q.C. (instructed by Messrs. Clyde & Co.) for the charterers.

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

Judgment was reserved.

Wednesday Apr. 1, 1992

JUDGMENT

Lord Justice LLOYD: On May 18, 1983 *Lefthero* was chartered on the Gencon form to load a cargo of 25,000 tonnes of steel products for carriage to Bandar Khomeini at the head of the

Persian Gulf. The Iran/Iraq war was at its height. The dangers of sailing in those waters were well known. There were a number of provisions in the charter-party designed to meet the special circumstances. Thus an addendum signed on the same date as the charter-party gave the owners the right to refuse to go to Bandar Khomeini, in the event of that port being blockaded, or if insurance rates quoted in the market made it "economically unfeasible" to proceed to Bandar Khomeini. It was then for the charterers to nominate another safe Iranian port of discharge.

More striking, there was a provision for laytime to count continuously from arrival at the pilot station at Bandar Abbas, at the entrance to the Persian Gulf, until passing the pilot station on the return voyage, except for the actual steaming time to and from Bandar Khomeini. A similar provision is to be found in *The Anna Ch.*, [1987] 1 Lloyd's Rep. 266, and no doubt in other charter-parties around that time

What happened in the present case was this. The vessel arrived at Bandar Abbas on July 7, 1983, where she gave notice of readiness. From Bandar Abbas vessels destined for Bushire, and beyond, proceeded in convoy. *Lefthero* missed the first convoy, but caught the next, which left on Aug. 6. From Bushire she continued in another convoy bound for Bandar Khomeini. But on Aug. 10, the pilot turned back, on the ground that the vessel could not make sufficient speed. If the vessel had been permitted to proceed she would have arrived at Bandar Khomeini on Aug. 12, with eight days' laytime still in hand.

On Aug. 22 the vessel made a second attempt, this time starting four hours ahead of the rest of the convoy. But once again the pilot turned back, for the same reason as before. On Sept. 25, the receivers indicated that they would be willing to take delivery of the cargo at Bushire, on being paid $15 per tonne compensation by the charterers. On Nov. 21 the parties agreed, without prejudice to liability, that the vessel should discharge at Bushire. In due course she discharged into barges, first in the anchorage, and thereafter alongside. The rate of discharge was very slow. She did not complete until Feb. 3, 1984.

The charterers claimed damages for the owners' failure to discharge at Bandar Khomeini. The owners had two lines of defence. The first was that Bushire was as near to Bandar Khomeini as the vessel could safely get, and therefore an alternative contractual destination. A distinguished panel of arbitrators rejected that line of defence without hesitation. Although Bushire was indeed as near as the vessel could safely get, the addendum, which did not include those words, prevailed over the printed words of the charter-party, which did.

The second line of defence was provided by cl. 28 of the charter-party, which reads:

> Neither the vessel nor the Owners or Master nor the Charterers/Shippers/Receivers shall be responsible for any loss or damage or delay or failure in performing hereunder, arising or resulting from:
>
>> Act of God, act of war, perils of the seas, act of public enemies, [pirates] or assailing thieves, arrest or restraint of princes, rulers or people, or seizure under legal process provided bonds are promptly furnished to release vessel or cargo, either partial or general, or riot or civil commotion.

The arbitrators held that the action of the administrators in requiring the vessel to return to Bushire on Aug. 10 and 23, fell within the words "restraint of princes". There was no appeal against that finding.

But then came the owners' counterclaim for demurrage. The charterers argued that if the owners were protected by cl. 28, so were they. What was sauce for the goose was sauce for the gander. The arbitrators dealt with this point quite shortly. This is not surprising as they had a great many other points to decide. In par. 56 they say:

> However, just as it seems to us that the charterers' claim cannot succeed because of the "restraint of princes" exception, it is equally clear that the owners' demurrage claim cannot succeed to the extent that demurrage accrued due to the same excepted cause. The exception of "restraint of Princes" protects the charterers from the consequences of the ship not being permitted to proceed to Bandar Khomeini on 10th August. Those consequences included the whole of the delay up to the commencement of discharge at Bushire. Charterers are also protected from the consequences arising from the prolonged course of discharge at Bushire since, in our view, this arose in the main because of poor facilities, an impediment which would not have operated in Bandar Khomeini. We are satisfied that the owners can only recover demurrage to the extent that it would have been incurred if the ship had been permitted to discharge at BK.

On that basis, we approach the matter as follows . . .

They then calculated that the vessel would have been detained 18 days beyond the laydays, which, at $4500 per day, comes to $81,000.

The owners were dissatisfied with this award. So they applied for, and obtained, leave to appeal on a question of law. The appeal came before Mr. Justice Evans on Feb. 21, 1991. He upheld the award (see [1991] 2 Lloyd's Rep. 599). There is now a further appeal to this Court.

All too often in these cases there is an overlarge citation of authority. The present case was a happy exception. Few cases were cited, and even fewer will suffice to explain why I am obliged to disagree with the Judge, and the arbitrators, a course which I would be most reluctant to take unless I felt constrained by binding authority.

On the face of it, the words of cl. 28 are wide enough to cover delay by the charterers in discharging the vessel, where the delay arises or results from restraint of princes. If the charterers are not so protected, then the clause is, as the Judge said, very one-sided. But it has long been the law that to protect a charterer against liability for demurrage, the language of the exceptions clause must be clearly worded to that effect. Thus in *The Johs Stove*, [1984] 1 Lloyd's Rep. 38, where the exceptions clause was in almost identical terms, the arbitrator held, apparently without hesitation, that the clause did not operate as a direct exception on the laytime clause. I said (at p. 41, col. 1):

> . . . I agree with the arbitrator that a general exceptions clause, such as cl. 19, will not normally be read as applying to provisions for laytime and demurrage, unless the language is very precise and clear.

That decision is not, of course, binding on us. So I turn to the next case, which is. In *The Kalliopi A*, [1988] 2 Lloyd's Rep. 101 the vessel was chartered to carry a cargo of steel scrap from Rotterdam to Bombay. When she arrived at Bombay she was unable to berth by reason of congestion. The master gave notice of readiness, since the charter-party provided for notice of readiness to be given, whether in berth or not. Clause 36 provided:

> 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 was conceded by charterers that the clause did not protect them during the running of laytime. The question was whether it afforded them protection once laytime had expired. Mr. Justice Evans held that it did (see [1987] 2 Lloyd's Rep. 263). But the Court of Appeal disagreed. Lord Justice Staughton referred to the maxim, "once on demurrage always on demurrage" which he held, following an observation of Lord Diplock in *The Dias*, [1978] 1 Lloyd's Rep. 325 was but an example of the general principle that an ambiguous clause is no protection. Applying that general principle, Lord Justice Staughton held that cl. 36 was insufficiently clear to protect the charterers after the expiry of laytime. He quoted from Lord Edmund-Davies' speech in *The Dias* at p. 329,

> . . . 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.

The Kalliopi A was followed by Mr. Justice Hobhouse in *The Forum Craftsman*, [1991] 1 Lloyd's Rep. 81. In that case the vessel was chartered to carry a cargo of sugar to Bandar Abbas. After she had commenced discharge, she was ordered off the berth because her cargo was damaged. She returned to the anchorage, where she remained for 79 days. She was already on demurrage when she was ordered off the berth. Charterers sought to rely on cl. 28, which provided:

> Strikes or lockouts of men, or any accidents or stoppages on railway and/or canal and/or river by ice or frost or any other force majeure causes including Government interferences, occurring beyond the control of the shippers of consignees, which may prevent or delay the loading and discharging of the vessel, always excepted.

In his judgment Mr. Justice Hobhouse stated the relevant principles in this branch of the law with conspicuous clarity. He concluded that the case was indistinguishable from *The Kalliopi A*. At p. 88 he said:

> . . . the clause has to demonstrate a clear intention that the exception should apply even when the vessel is on demurrage whether or not the operation of the peril arises from the earlier breach by the charterer of his obligation to discharge within the

laydays. For a clause to have such a clear intention requires language that leaves one in no doubt that that is what the parties intended. Clause 28 falls short of demonstrating such an intention.

Mr. Siberry, for the charterers, seeks to distinguish *The Kalliopi A*. In the first place he points out the language of the two clauses is different. But if anything cl. 36 in *The Kalliopi A* was more favourable to the charterers, since it adverts specifically to loading and discharging the vessel. It is true that it also refers to "preventing" the discharge, whereas cl. 28 refers to delay. But as Mr. Justice Hobhouse pointed out in *The Forum Craftsman*, the Court of Appeal in *The Kalliopi A* did not found its decision on the choice of the word "prevent". The result would have been the same even if the clause had said "prevent or delay".

A further respect in which cl. 36 could be said to be more favourable to the charterers is the inclusion of the words "always mutually excepted". This might suggest that the clause was intended to protect the charterers after as well as before the expiry of laytime. But that was not the view taken by the Court of Appeal.

Mr. Siberry rightly points out that an authority on one form of words is often of little help in construing another form of words. But here I can see no relevant difference between the two clauses. Although fine distinctions are sometimes inevitable, there is no need for one here. As for *The Johs Stove*, the clause is virtually identical, save for the omission of strikes from the lists of excepted perils, and for some sloppy drafting. The decision has only stood for 10 years, or less. Even so, I see no reason to disturb it.

Mr. Siberry relied on *The Onisilos*, [1971] 2 Lloyd's Rep. 29, in which the Gencon strike clause fell for consideration. Mr. Siberry argued that the Court of Appeal would have held that the first paragraph of the strike clause excluded charterers' liability for demurrage even if that paragraph had stood alone. I can extract no such indication from the judgment. On the contrary, all three judgments emphasize that the clause must be construed as a whole.

Mr. Siberry's second submission depends not on any fine distinction between the language of the two clauses, but on the different factual situation. In *The Kalliopi A*, Lord Justice Staughton referred to a justification for the maxim, "once on demurrage always on demurrage", which has received judicial blessing from time to time. If the vessel has discharged within her laydays, then she will be unaffected by any subsequent cause of delay. But if she is still discharging when the excepted peril supervenes, and the laydays have already expired, then it can be said that the cause of delay is not the excepted peril, but the charterers' breach in failing to discharge within the laydays. In the present case, the excepted peril, restraint of princes, operated *before* laytime expired. This distinction is said to be important. It means that the maxim, "once on demurrage always on demurrage" does not apply. The cause of the delay was not charterers' breach, but the excepted peril. This is, Mr. Siberry contends, the true explanation of *The Kalliopi A* and *The Forum Craftsman*.

I agree that in *The Forum Craftsman* the vessel was already on demurrage when she was ordered off the berth. But in *The Kalliopi A* the peril, congestion, was in operation before the vessel came on demurrage. So the factual situation was the same as in the present case. I can find no support for Mr. Siberry's suggested distinction in Lord Justice Staughton's judgment. Indeed the judgment is inconsistent with such a distinction. Having referred to the cases on which Mr. Siberry's argument rests, Lord Justice Staughton said at p. 106, col. 2:

> 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.*

So it is clear that the Court regarded the general rule as applicable even though the vessel was not already on demurrage when the peril operated. That disposes of Mr. Siberry's second submission.

There are two further considerations which point in favour of the owners. The typed addition to cl. 6, under which time was to count from arrival at Bandar Abbas, shows that the underlying objective of the parties was to compensate the owners for any delay due to the operation of the convoy system. Of course, it would have been possible for an exception to override that objective. But it would take very clear words indeed.

Secondly, if it be necessary to find some scope for charterers' liability for delay, other than delay in loading and discharging, then Mr. Young suggested, by way of example, delay in the presentation of bills of lading for signature: see *Nolisement (Owner) v. Bunge y Born*,

[1917] 1 K.B. 160; Scrutton on Charterparties 19th ed. p. 157. But I should add that I would not in any event have been deterred from reaching what I regard as the correct construction of the charter-party by the need to give effect to every word of a mutual exceptions clause, especially when the clause is as wide and general as cl. 28.

That leaves only the judgment of the Court below. It proceeds along the same lines as Mr. Siberry's second submission. Having referred to *The Forum Craftsman*, Mr. Justice Evans continued:

> He [Mr. Justice Hobhouse] regarded the case as being "in substance indistinguishable" from the decision of the Court of Appeal in *The Kalliopi A*. Since the earlier case was one where the excepted period began to operate *before* the vessel came on demurrage, it would seem at first sight that the question whether laytime had expired was not a material factor, but having regard to the whole of his judgment this cannot be what Mr. Justice Hobhouse had in mind. The explanation, in my respectful view, is that the Court of Appeal treated *The Kalliopi A* as a case where the distinction was irrelevant, without questioning the principle which Mr. Justice Hobhouse later stated and applied.

I find that I cannot agree with Mr. Justice Evans' explanation of *The Forum Craftsman*. Both Mr. Justice Hobhouse and Lord Justice Staughton applied the same principle, namely, that stated by Lord Diplock in *The Dias*. That is why Mr. Justice Hobhouse regarded the cases as indistinguishable. If that is so, I do not see how the present case can be distinguished. Nor can *The Kalliopi A* be explained on the basis of the charterers' concession. This is, in truth, a case where the maxim, "once on demurrage always on demurrage", and the various judicial explanations and justifications for the maxim, have tended to confuse rather than clarify the issue. If it is not already too late, it might be better if, within the general principle stated in *The Dias*, the maxim were confined to the operation of laytime exceptions, strictly so-called, e.g. Sundays and holidays excepted, which do not apply once laytime has expired.

Finally there is the respondent's notice. Mr. Siberry argued that the failure of the vessel to reach Bandar Khomeini was a "fault" on the part of the owners within the principle stated in art. 156 of Scrutton, and therefore laytime did not run during the continuance of the fault. It makes no difference that the owners were protected from liability by cl. 28, since the principle does not depend on actionable breach. Mr. Siberry relied on *In re Ropner Shipping Co. Ltd. and Cleeves Western Valleys Anthracite Collieries Ltd.*, [1927] 1 K.B. 879. But in that case the vessel was withdrawn from the service of the charterers for the owner's own purposes, namely, taking on bunkers. In the present case there was no question of removing the vessel from the service of the charterers for the owners' purposes or for any other purpose. Although it took a long time before discharging started, and although the rate of discharge thereafter was painfully slow, the vessel was at the charterers' disposal throughout. I am unwilling to hold that the vessel was at fault within the principle on which Mr. Siberry relies. He does not seek to rely on the wider principle canvassed by the Judge. The only case in which the point appears to have been considered is *The Anna Ch.*, where it was decided against the charterers, in my view correctly.

For the reasons stated I would allow this appeal. It was agreed that in those circumstances the case would have to be remitted to the arbitrators for a fresh calculation of the demurrage due.

Lord Justice WOOLF: I agree this appeal has to be allowed for the reasons given by Lord Justice Lloyd. Initially I was impressed by the approach of Mr. Justice Evans and the argument advanced with conspicuous skill by Mr. Siberry based on cl. 28 of the charter-party. However, I am persuaded there is no acceptable way of distinguishing *The Kalliopi A* from this case. Even if we were not bound by the decision of this Court in that case, I would be required to come to the same conclusion, because of the unusual provision added to cl. 6 of the charter-party. This provision stated that laytime was:

> . . . to count from arrival pilot station Bandar Abbas until passing pilot station Bandar Abbas except for actual steaming time to and from Bandar Khomeini which to be excluded from time counting.

That clause so amended strongly suggests that the charterers were to bear the risk of delays of the nature that occurred.

Lord Justice RUSSELL: I also agree.

[*Order: Appeal allowed with costs here and below; award remitted to the arbitrators for a calculation of demurrage; application for leave to appeal to the House of Lord refused.*]