

BOOK REVIEWS

REVUE DE LIVRES

A Journey through "Scrutton on Charter Parties"

(18th Edition) General Editors Sir Alan Abraham Mocatta, Michael J. Mustill, Q.C. and Stewart C. Boyd, London: Sweet & Maxwell Limited, 1974, Pp.ci, 624 (\$31.90).

The late Lord Justice Scrutton, in the year 1886, completed *Scrutton on Charter Parties and Bills of Lading* which, in the course of many editions, has become a classic among legal writings on the subject of contracts of affreightment, and an authority which has endured as such (thanks to the stature of its successive editors) into the nineteen seventies.

When we were invited to contribute a review of this textbook, we demurred — in part because when a legal writing has reached its eighteenth edition and run the gamut of ten previous reviews and notices, only an aspirant possessed of the most entrenched temerity would tread such a path, and in part, because the reviewing of a professional opus, it seems to us, should essentially be aimed at recipients who already possess at least a working knowledge of the subject matter.

In its stead, we proposed that we should contribute something in the nature of a disquisition through the actual text of this work, which would be directed exclusively at the neophytic traveller to the realm of Affreightment, with the idea in mind of attempting to emphasize for him those portions of the book which are fraught with Stygian gloom for all but the most professionally advanced in time and accomplishment, and those parts which ignite, even for the beginner, an almost instantaneous recognition of meaning and worth.

In sum, we shall picnic through *Scrutton*, endeavouring to guide around its pitfalls, visit its reassuring glades, and withal, to reveal the crisp clarity and apposite approach of the present editors, not only in their elucidation of acknowledged difficulties and unsettled points, but also in their forthright submissions aimed at dispelling the darkness for us.

Lest we appear to be unduly dour about the complexities which might be sat upon the unwary student who would attempt to run to *Scrutton* rather than to stroll in his direction, we would offer the comments of one reviewer of a prior edition: "Scrutton, of course, is not a work to be recommended to students at the outset of their

study of shipping law. On the other hand, its use of clearly-stated propositions, followed by illustrations and notes, adapts its subject matter perfectly to the practitioners' need for a ready reference". On the brighter side that reviewer added: "Shortly put, a more useful book of its kind is not to be found, and a better one is not likely to be written".¹ But another reviewer snapped and sniped: "For most practitioners the contract of affreightment is an uncharted sea".²

Finally, if only for the purpose of sheltering ourselves from an accusation of having made a perfunctory examination of the present edition, we advert to the fact (possibly a shameful admission) that, for the first time, we have read and studied *Scrutton* in its entirety, and we hope, in the freshening process, digested sufficient reawariness of his teachings to justify the slogging match it was, and to pass on something of value.

But first, what of the author himself? He was a man of many legal parts. He won the Yorke Prize at Cambridge twice in three years for essays on "The Influence of the Roman Law on the Law of England" and "Laws relating to Commons and Enclosures". In 1894, he produced the first complete handbook to the (then) new *Merchant Shipping Act, 1894*,³ anticipating Temperley⁴ (the present "bible" on that subject) by one full year. He wrote two other legal texts, *The Law of International Copyright* and *The Elements of Mercantile Law*, and finally, he was consulting editor for the compilation, *The Commercial Laws of the World*.

The charm of the work itself lies in the simplicity of its format; it has twenty-three divisions referred to as Sections rather than Chapters. The first eight relate to the "Nature and Construction of the Contract" of affreightment, the "Parties to [that] Contract", "Agency", "Charterparties", "The Bill of Lading as a Contract", "Bills of Lading for Goods on a Chartered Ship", the "Terms of the Contract" and "Representations" (touching also upon misrepresentation). Sections fourteen, fifteen, sixteen, seventeen, eighteen, twenty-one and twenty-two cover "Demurrage", "Freight", "Time Charters", "Through Bills of Lading, Combined Transportation and Containers", "Lien", "The Carriage of Goods by Sea Act", and "Jurisdiction", respectively. The remaining sections relate, *inter alia*, to the performance of the contract, and the various rights and obligations arising out of it, beginning with the steps preparatory to

¹ (1911) 27 L.Q.R. 129.

² (1939) 55 L.Q.R. 603.

³ 57-58 Vict., c.60.

⁴ R. Temperley, *The Merchant Shipping Act* 7th ed. (1976).

loading, and ending with a discussion of the rules regarding the damages recoverable for breaches.

As a bonus, there are seven Appendices, commencing with excerpts from the principal English statutes affecting the Contract of Affreightment and ending with the text of the British Maritime Law Association Agreement of August 1, 1950 (more popularly known as the "Gold Clause Agreement"), all with commentaries and footnotes by the editors.

The method adopted by the author, and continued by successive editors to date, is to state the principles and rules of law in the form of Articles running continuously through the Sections, and numbered consecutively. Each Article, in turn, gradates to a concise summary in smaller type of the decided cases from which the rule has been extracted and which serve as examples of the principles laid down. Some of the Articles also contain a Note, also in smaller type, in which the editors deal with any matter relating to the particular Article or to the cases, which seems to require elucidation, and which they marry with their own submissions. Finally, each Article is salted with copious but beautifully abbreviated footnotes, which, in their content, range from further points emphasized by the editors to additional supporting judgments.

The subject matter of the book, in short, is about one man's goods being transported by water for a price by another man's vessel, and of the tribulations one falls prey to while fortune (of fact and in law) smiles upon the other.

Portions of the book, because of the easy, flowing style of author and editors and their patent ability to discuss even difficult principles clearly will be more readily grasped not only by those with some grounding in affreightment but even by those with none. Here are a few samples which we have chosen at random.

In the family of affreightment contracts, the demise charter is a distant cousin of the others since under it the vessel owner leases out the ship, on occasion complete with its Master and crew, and at other times, the charterer himself puts a Master and crew aboard. In either case, the entire possession, control and authority over the vessel passes to the demise charterer, so that he becomes temporary owner, and as such alone answers in tort and contract to third persons. The summary (p.48) of the consequences which stem from this particular contract, is readily understandable even to the beginner.

Excepted perils or exceptions in the contract of affreightment (*i.e.*, perils which are stated in a charterparty as excusing the vessel owner, and sometimes the charterer, from performing their con-

tractual duties where such perils have prevented performance) are dealt with at page 204. The query is then raised as to whether a "fundamental breach" of the contract will nullify the excepted perils as protective excuses for the shipowner or charterer. At this juncture, the editors offer a clearer explanation of "fundamental breach" and "fundamental term" than, we venture to say, you will find in many another legal text dealing with those concepts. It is a joy to follow in its compactness and simplicity of exposure. Small wonder that one past reviewer of *Scrutton* observed: "[T]he General Law of contract owes much to the law maritime (witness the proportion of shipping cases in any text book on the principles of contract), and the veriest landlubber, in quest of cases on such topics as agency, construction, custom and frustration, may get his bearings from *Scrutton*".⁵

A practitioner will sometimes be vixened and vexed with a case where he must determine, as a matter of construction, whether his charterer-client is or is not protected under an exception or exemption clause in the particular charterparty; it may well be that its wording protects the vessel owner, but whether the clause may avail his own client can frequently seem a toss-up. *Scrutton* discusses with ease and clarity this difficult aspect of mutuality of contractual protection (p.207).

There are twin imps who often dwell within the precincts of a voyage charterparty — Messrs "Demurrage" and "Dispatch Money". The first refers to the agreed (liquidated) damages a charterer will pay the vessel owner or carrier in the event he holds the vessel at loading or discharging stages beyond the time allotted, and the second to the rebate of freight the charterer will earn for loading or discharging in less than the time allotted. The author deals succinctly with both (p.303) and follows with one or two simple examples of demurrage clausung (p.304).

In respect of the rather complex subject of through bills of lading (documents which frequently involve two or more separate stages in carrying the same goods, *i.e.*, land, sea and occasionally air transit, as well as two or more distinct carriers) the author's treatment (p.371) is so lucid that it removes a good deal of the confusion and intellectual frustration which normally accompanies this subject. In the same Section (p.374) the questions raised by the various international conventions governing carriage by sea, road and air are examined. Particular attention is paid to the "CMR Convention", including its provisions for roll-on/roll-off traffic (*i.e.*,

⁵ (1949) L.Q.R. 399, 401.

lorries which drive onto a ship at loading port, and off her at discharge end). There is also a discussion of the use of cargo containers (now common in the field of combined transportation) which are described as "essentially no more than a sophisticated form of package" (p.379).

A final example of clear, straightforward handling by *Scrutton* may be found in the exposition on damages which may arise from breaching the contract of affreightment (p.387). Those who have suffered at the hands of less adept authors on this subject will be truly grateful for the relative ease of treatment. The author is particularly succinct when dealing with mitigation, observing:

A party claiming damages must assess them on a reasonable basis, and the phrase that he must mitigate damages has often been used. There is, however, some ambiguity and confusion in its use. If a man allege that he has sustained £100 damages, it may be shown that if he had acted somehow differently, or had taken a certain course, his loss might have been only £50. It may be said, and in older cases was more commonly said, that he must mitigate his damages and so reduce them to £50. But in most cases it may equally be said, and in modern times probably would be said, that £50 was, and £100 was not, the true measure of his damages. The extra £50 "loss" has resulted, not from the breach of contract, but from his own action or abstention (p.389).

However, on the other side of the coin, there are principles and rules having to do with facets of the contract of affreightment which, although well and truly expounded in this book, still leave a feeling of unease and at best semi-comprehension even for the experienced practitioner; for the beginner they will seem at times unfathomable. A prime example of these difficult items will be found at the very outset of the Section on "Bills of Lading for Goods on a Chartered Ship" (p.56) where the author poses six separate queries regarding the relative standings, rights and obligations of the vessel owner, the charterer, and the endorsees and holders of a bill of lading which has been issued for goods on a chartered ship. Suffice it to say, the author does manage an admirable disentangling.

An important part of the book concerns the *Carriage of Goods by Sea Act, 1924*⁶ which is given masterful treatment. This is English domestic legislation based on the rules which many national bodies agreed (at Conventions at the Hague during 1921-23) should govern the relations between the sea carrier, whether vessel owner or charterer, and the party with active rights to the cargo being carried and transported (commonly referred to as the holder of the bill of lading); the latter might be the shipper of the cargo, the consignee

⁶ 14-15 Geo. V, c.22.

or an endorsee for valuable consideration. The "Introductory Notes" to the topic emphasize that a few years prior to the Conventions, the initial idea in England was to introduce legislation based on the lines of, *inter alia*, the already existing Canadian *Water Carriage of Goods Act, 1910*⁷ but this approach never received popular acceptance. These notes explain, simply and clearly, the sections of the Act, which take the form of articles and rules, and the international rules which form part of it. The rules apply automatically to the venture⁸ where the goods are carried under a contract falling within the express definition of "contract of carriage" as set out by the Act, and they will also apply where the parties to a voyage charterparty have expressly stated that all of the terms and conditions of the Act shall form part of the charterparty. These rules saddle the carrier with certain responsibilities and liabilities, at the same time clothing him with compensating rights and immunities. *Scrutton* characterizes this legislation as follows: "The purpose of the Act is to standardize within certain limits the rights of the holder of every bill of lading against the shipowner" (p.402).

The author then proceeds to take the Act, section by section and rule by rule, and to discuss and explain. An example of the easy fashion in which this is done is the treatment of the problem raised in attempting to determine what constitutes a "package" or "unit" for the purposes of the £ 100 limitation figure in article IV, rule 5. The author comments that there is no direct English authority as to their meaning, so that he has been forced to refer to American, Continental and Canadian authorities. For example, in 1967, a U.S. Appeal Court ruled that a pallet (a rectangular cargo tray constructed like a grating, which, with its load, is hoisted into or out of the ship's hold) with a number of cartons strapped to it, constituted a package.⁹ However, it should be noted that in 1975, the Federal Court of Canada found that it was not the pallet which constituted the "package" but rather each carton.¹⁰ *Scrutton* then observes that as

⁷ S.C. 1910, c.61.

⁸ This word, with its frequently encountered companions *viz.*, "Adventure", "Common Maritime Adventure", means roughly the Seller-Shipper, let us say, having the goods transported via the sea to his Buyer-Consignee on the Ocean-Carriers' vessel at the price of the freight, all of which will be exposed to sea perils whilst on passage, the perils imparting to the combined commercial undertakings of sale and delivery of goods with their carriage to destination the element of adventure or risk.

⁹ *Standard Electrica S.A. v. Hamburg Sud-amerikanische D.G.* [1967] 2 Lloyd's Rep. 193.

¹⁰ *International Factory Sales Service Ltd v. The Ship Alexander Serafinovich* (1976) 1 F.C.R. 35.

for "units", the alternatives are either "freight units", *i.e.*, the unit of measurement used to calculate the freight, or the "shipping unit", *i.e.*, the physical unit received by the carrier from the shipper, but that "[w]hichever solution is adopted anomalies are bound to arise, as the cases show" (p.443).

The author devotes some space to discussing certain important changes which will come about when the new English *Carriage of Goods by Sea Act, 1971* comes into force (p.450). In this connection, however, the *Law Quarterly Review* 1975 comments: "It seems unlikely that the Carriage of Goods by Sea Act 1971 will, in the near future, be brought into force since work on the drafting of a new convention on Bills of Lading is currently being carried out in the United Nations. The new draft places a very different emphasis on the relationship between the Shipper and the Carrier".¹¹

One illuminating aspect of the book is that the historical background of a certain point of law is sometimes traced. A good instance is where the author, in commenting on excepted perils in the contract of affreightment and, in particular, the exception to the carrier's liability for "the King's enemies", explains that this stemmed from the old English rule that the bailees had no action against such enemies since they were not amenable to civil process, and that therefore it was not fair that the bailor should sue him, the bailee, alias the carrier (p.202, fn.26).

Another helpful feature that is set out in Appendix I are extracts from the principal English statutes affecting the contract of affreightment, to which references are made at various intervals throughout the text. Amongst these statutes is the *Merchant Shipping Act, 1894*¹² upon which our own Canada *Shipping Act*¹³ was initially based. These statutes constitute domestic legislation entirely outside any international rules, and they supplement the contract of carriage with rights and duties in respect of both the vessel owner or charterer, and the party whose goods are being transported. A practical example from these supplemental statutes is the provision in the English *Bills of Lading Act*¹⁴ whereby every consignee of goods named in a bill of lading and every endorsee of the bill, to whom the property in the goods passes by reason of the consignment or endorsement, has vested in him all rights of suit and is subject to the same liabilities in respect of the goods as if the contract contained in the

¹¹ (1975) 91 L.Q. 158.

¹² 57-58 Vict., c.60.

¹³ R.S.C. 1970, c.S-9.

¹⁴ 18-19 Vict., c.111.

bill of lading had been made with him. Accordingly, it could be one of three persons (the shipper, the consignee or the endorsee) whom the vessel owner or charterer might sue for unpaid freight, or it might equally be one of those three who sues the vessel owner or charterer for goods delivered short in quantity or arriving in damaged condition.¹⁵

Another strength of the book lies in the clarity and ease with which perplexing questions of law and fact arising from the very nature of the contract of affreightment are dealt with, together with the myriad situations that contract seems unendingly capable of spinning; the following sample should help to underline the dexterous approach of the author and his current editors.

One of the excuses available to the vessel owner (both by virtue of the *Carriage of Goods by Sea Act* and of any charterparty which includes such a clause) is there cargo damage is incurred through the neglect or default of the pilot, master or servants of the vessel owner, in the navigation or management of the ship. A difficulty frequently arises as to whether a particular situation of neglect can be brought under the rubric of "navigation" of the ship. In *Carmichael v. Liverpool S.S. Association*¹⁶ a cargo of wheat was damaged through improper caulking of a cargo-port (*i.e.* an opening) by the vessel owner's servants before the voyage began. The English Court of Appeal held that this was "improper navigation", because it affected the safe sailing of the ship. However, in another case, *Canada Shipping Co. v. British Shipowners' Association*,¹⁷ a cargo of wheat was damaged by being stowed in a dirty hold at voyage commencement, and again, the vessel owner pleaded neglect in navigation as a defense to the claim. The Court of Appeal, in this instance, found the facts did not amount to neglectful navigation. The author observes that "[t]he distinction between these two cases appears to

¹⁵ We, of course, are more interested in the Canadian Acts which will affect a contract of affreightment. These are federal acts, such as the *Canada Shipping Act*, R.S.C. 1970, c.S-9; *Carriage of Goods by Water Act*, R.S.C. 1970, c.C-15; *Bills of Lading Act*, R.S.C. 1970, c.B-6; *Federal Court Act*, S.C. 1970-71-72, c.1; *Customs Act*, R.S.C. 1970, c.C-40; *Interpretation Act*, R.S.C. 1970, c.I-23; *Shipping Conferences Exemption Act*, R.S.C. 1970 (1st Supp.), c.39; *National Harbour Board Act*, R.S.C. 1970, c.N-8; *National Transportation Act*, R.S.C. 1970, c.N-17; and the *Nuclear Liability Act*, R.S.C. 1970 (1st Supp.), c.29. Provincial Acts such as the *Frustrated Contracts Act*, R.S.O. 1970, c.185; the *Sale of Goods Act*, R.S.O. 1970, c.421; and the Civil Code articles on Affreightment and of Carriers (arts.2407-2460; 1672-1682b) would also appear to affect the contract.

¹⁶ (1887) 19 Q.B.D. 242.

¹⁷ (1889) 23 Q.B.D. 342.

depend not upon the time when the negligence first took place . . . but upon the fact that in the former case the safe sailing of the ship was affected whereas in the latter the safe sailing of the ship was not, but the proper and careful carriage of the cargo along was interfered with" (p.234).

As one would by now expect, author and editors display a forthright and confident mastery in their reactions where a point of law is difficult or has been left open. In Article 43, the observation is made that substantial accuracy in the name of the vessel will be a condition of the contract of affreightment, but the present editors, acknowledging that this statement has appeared in all previous statements of the work, comment: "We know of no case supporting it, but substantial inaccuracy might seriously affect insurance of cargo" (p.76, fn.17).

Furthermore, the author does not hesitate to disagree where he believes a case has been incorrectly decided. On the subject of damages, having quoted certain authorities requiring the vessel owner to mitigate his damages by accepting substituted employment for his vessel in the event of the charterer refusing to load, he comments by footnote that the case of *Smith v. McGuire*

... suggests a doubt whether the shipowner is bound to find substituted employment for his ship, or to give credit for what he could earn on such substituted employment. *This cannot be correct.* Of course, the shipowner need not employ the ship unless he likes, just as a servant wrongfully dismissed may take a holiday if he likes. But if the charterer refuses to load under a charter on which the shipowner would earn £1000, and, freight having risen when he refuses, the shipowner could at once get a cargo for the same voyage on which he would earn £1,200, clearly the shipowner's damages are only nominal, just as would be those of a wrongly dismissed servant suing for £100 as six months' salary, if it be shown that instead of taking a holiday he could have earned £120 in the same period (p. 389, fn.17, emphasis added).

At one point, when discussing the question of the charterer having failed to load within a fixed time, the author refers to a case and comments: "The headnote of the report is inadequate and inaccurate" (p.315, fn.88). *Scrutton* offers this same comment in connection with quite a number of other cases cited in the text. It goes without saying that such forewarning is of great value to both beginner and practitioner.

For the Canadian reader, a welcome discovery is that from time to time the author informs us of the reactions of Canadian courts on certain points of law. Thus, in Article 108, dealing with the operation of exceptions which may excuse the vessel owner from liability for loss or damage to goods, the author observes that the term "Perils

of the Sea", whether in policies of marine insurance, charterparties or bills of lading, has the same meaning. He comments that the Supreme Court of Canada, in *Goodfellow Lumber Sales v. Verrault*,¹⁸ arrived at a view of the law very similar to his own. Again, in Article 87 on "Loading and Stevedores" the author comments that "[a] shipper who takes an active interest in the stowage [of the goods] cannot afterwards be heard to complain of patent defects in the stowage of which he made no complaint at the time". He emphasizes that this statement of law was approved by the Supreme Court of Canada in *Mannix v. Paterson*¹⁹ (p.167, fn.8).

At the risk of seeming to bite the hand that has fed us, and even of being accused of counselling a counsel of perfection, we must pause here to cast a more critical eye over some of the specific instances in the book where there is room for improvement.

One example is in connection with the discussion on classification of charterparties. The author comments that whether or not a charter amounts to a demise must depend on the particular terms of the charter, and that the old cases on demise charters are not of great assistance since their authority has been shaken by more recent decisions (p.45). Unfortunately, he leaves us completely in the air as to the identities of those decisions and as to their specific effect. For the practitioner, at least, it is manifestly an important point which could produce far-reaching consequences.

Another instance arises in the description of the aspects of chartered and substituted tonnage; chartered tonnage is the actual vessel which the shipowner agrees to deliver under the charter, and substituted tonnage is another, like vessel, which a clause in the charter party permits him to provide in substitution for the first. It is pointed out that the option to substitute does not survive the total loss of the chartered vessel (p.51). It seems to us that the author or editors might profitably have added here the reason for this, as explained in *Niarchos v. Shell Tankers*: "Since to 'substitute' is used in the charterparty in the sense of replacing an existing vessel by another and withdrawing the first, that other vessel can only be substituted for a live vessel, and, accordingly, with the occurrence of the total loss, the time charterparty being then frustrated, the contractual right to substitute would lapse".²⁰

In dealing with the charterer's obligation (where there is an express provision in the charterparty) to order the vessel only to

¹⁸ [1971] 1 Lloyd's Rep. 185

¹⁹ [1966] 1 Lloyd's Rep. 139.

²⁰ [1961] 2 Lloyd's Rep. 496.

a safe port (there being an express provision in the charter party to that effect), the author specifically states that “[i]f it is not safe, the ship can refuse to obey the order” (p.122). But almost immediately he qualifies this statement by adding, in footnote 24: “This is as yet uncertain . . . [though] there are dicta to be found to this effect”. It seems to us that this is such an important and material qualification it might well have been included in the text. This would be an infinitely safer course, because many a reader who does not actually consult the footnote, might well jump to the conclusion that its content was *confirmante* rather than *dubitante*.

When the author reaches his topic of “Charterer’s Undertaking: to Load or Unload in a Fixed Time”, the actual text for Article 154 commences: “Charterparties, in regard to the time for loading or discharge, fall into two classes, (1) for discharge within a fixed time, (2) for discharge in a time not definitely fixed” (p.314). We are somewhat at a complete loss to understand why the first three lines of the text did not read: “Charterparties, in regard to the time for loading or discharge, fall into two classes, (1) for *loading* or discharge in a fixed time, (2) for *loading* or discharge in a time not definitely fixed”. The time factors of “fixed” or “not definitely fixed” relate in content and sense throughout the Article, as they must and should, to both processes — loading and discharge. For what valid reason, then, in the two-fold description of classifications, is one of the processes omitted? When, additionally, this Article is read along with the footnotes and with Article 155 (loading or unloading where the time is not fixed), all of which again bear specific relation and reference to both processes, our puzzlement is compounded. Yet precisely the same wording appears in former editions of *Scrutton*, at least as far back as the 1923 edition, the earliest to which we had access.

A more general criticism of the book concerns the difficulties which the student rather than the practitioner will stumble over. Earlier we quoted a reviewer of *Scrutton* who cautioned that this was not a work which realistically could bring intellectual profit to the beginner, but solely to the at least partially-enlightened practitioner, because essentially it lacked a narrative or teaching recital. It is true enough that the book has no narrative in the sense that there is no readily understandable unfolding of the law, developed with continuity, stage by stage, with all of the pieces dropping into place in logical order and according to primary teaching etiquette. There are many chinks in the instructional armour, and sudden suspensions of the reader in the air, for example, by the interpolation of a later-to-be-explained concept or principle, which is temporarily

noticed by brief references only, but without, at that stage, substance, skeletal or otherwise, and yet which comprises a definite qualification to the concept, principle or rule then being developed.

In what ways, then, does this absence of uninterrupted narration place the beginner at a disadvantage, if not in a yawning vacuum? Some examples of the difficulties will illustrate the problem.

In discussing incorporating provisions (*i.e.*, the process of including in bills of lading, issued in respect of goods carried on a chartered ship, a provision purporting to incorporate into the bill of lading some or all of the terms of the charterparty) the author comments that a wide variety of these provisions is in common use, several of which have been discussed by the courts (Article 35). He then particularizes that, in each instance, and even if the clause is wide enough to produce a *prima facie* incorporation, it will be ineffective unless the incorporated term makes sense in the context of the bill of lading and is consistent with its terms; as an example, he declares that a "cesser clause" makes no sense in a bill of lading.

How is the beginner to appreciate the true force of this declaration when up to this point in the text, no mention, let alone explanation, of such a clause has appeared? He is in no position, firstly, to know that the nature of the cesser clause in a charterparty is to relieve the charterer of all liabilities under the contract upon shipment of the cargo, the *quid pro quo* being the granting to the shipowner of a lien on the cargo for, *inter alia*, dead freight; secondly, to accept that the reason the cesser clause would make no sense in a bill of lading is that it would cancel out the obligation of the consignee holding the bill of lading to pay the freight or any demurrage which might be incurred, so that the vessel owner would end up without reimbursement for the carriage performed or for the money-losing delay of his ship; in sum, that what would amount to an acceptable arrangement under one form of document would become a patent absurdity under another.

The author, in dealing with the vessel owner's undertaking as to seaworthiness of his vessel, states that "he [the shipowner] will not be liable on the ground of unseaworthiness if the latter does not *cause* the loss", Then the author instructs the reader to contrast the cases of deviation in which the deviation need *not* cause the loss (p.85, fn.88, emphasis added).

How is the beginner to understand the contrast when, at this stage in the book, the concept of deviation (*i.e.*, the vessel being diverted out of its agreed course on the voyage) has not even been raised? He lacks any basis for knowing that, in deviation cases, the explana-

tion for it being unnecessary to trace the loss to the deviation, or, in other words, why the link of causation is immaterial, is that the effect of the deviation is to go to the root of the contract and displace it, together with any exception clause the vessel owner might otherwise have relied upon.

Then the reader is advised that as regards "most vessels *sailing in a line* the master has no authority to alter the printed bill of lading or to vary the rate of freight or to make engagements to carry goods" (p.38, emphasis added). How is the beginner to reach the significance of the statement unless he is aware that "vessels sailing in a line" refers to those of liner companies which operate several vessels as distinct from the single vessel, *i.e.* a *tramper*, which is the sole vessel trading for her owner.

The author submits "that a statement of the *ship's class* is a condition of the contract, breach of which entitles the charterer to treat the contract as discharged" (p.74, emphasis added). Obviously, the beginner cannot follow the thrust of this submission if he is unaware that a "ship's class" refers, *inter alia*, to the grading, high or low, a vessel may be given by a Classification Society, such as Lloyds of England or the Norwegian Bureau Veritas, after a survey of the vessel has been made.

The unenlightened reader will also have to grapple with the observation that "as regards the supply of *bunkers* the obligation of seaworthiness has . . . been adjusted to meet commercial necessities by substituting . . . for the single obligation to make the vessel seaworthy once and for all at the commencement of the voyage a recurring obligation at the first port of each bunkering stage to supply the vessel with sufficient bunkers for that stage" (p.81). The beginner must first understand that "bunkers" refer to a vessel's fuel, be it oil, coal or a nuclear variant, which drives her main engines, and that "bunkering" is the taking on of such fuel, before his mind can fall into line with this particular aspect of a vessel's state of seaworthiness.

So the beginner — before tackling *Scrutton* — requires prodding with texts such as Ronald Bartle's *Introduction to Shipping Law*²¹ or Chorley & Giles *The Law of Shipping*.²² But even by the time he has finished his labours with either or all of these gentlemen — at least on the first occasion — he is, in all likelihood, still not sufficiently knowledgeable to follow immediately through into *Scrutton*.

²¹ R. Bartle, *Introduction to Shipping Law* 2d ed. (1963).

²² R.S.T. Chorley, *Shipping Law* 5th ed. (1963).

Moreover, there are many technical and other terms relating to the sea-carriage of goods which the beginner will encounter in *Scrutton* but which these "introductory" authors do not define or explain.

The millenium would be reached if someone were to compose a "Scrutton Primer", aimed specifically at an immediate jump into *Scrutton* proper. It could even take the form of a special introductory chapter or Section, simple and lucid, yet reasonably all-embracing of the various principles, concepts and rules shortly to be encountered in expanded and detailed form, and replete with an intelligible glossary of terms.

Despite its suggested shortcomings, *Scrutton on Charterparties* is a superb text-book, abiding in the kind of thinking that elevates. It is nothing less than a work of art, cited regularly and religiously as an authority by the courts of major sea-trading nations of the world.

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