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The shipment of dangerous goods and strict liability

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I.C.C.L.R. 136 The dispute between shippers and carriers on the point of liability for the shipment of dangerous goods has been the subject-matter of much controversy ever since the decision in *Brass v. Maitland*[1] some 140 years ago. In particular, where cargo has been shipped in circumstances where neither the shipper nor the carrier has the means of knowledge of the dangerous nature of the cargo, the question arises as to who should bear the risk.[2] This controversy has recently been the subject-matter of discussion in the House of Lords in *Effort Shipping Co. Ltd v. Linden Management SA,*[3] where their Lordships, *inter alia,* have finally put an end to the matter by confirming the majority decision in *Brass v. Maitland.* Furthermore, in so far as those cases where the Hague Rules apply, their Lordships have rejected the argument that Article IV, r. 6 is qualified by r. 3 of the same Article.[4] The latter point has been the subject-matter of much confusion both in the United States and England. This article reviews the decision in *Effort Shipping Co. Ltd* and also critically examines the nature of liability both at common law and under the Hague Rules.

EFFORT SHIPPING CO. LTD v. LINDEN MANAGEMENT SA

The proceedings in the House of Lords involved an appeal from a decision of the Court of Appeal on January 30, 1996 which itself dismissed an appeal from a decision of Longmore J. on March 29, 1994 who gave judgment for the plaintiff carriers, Effort Shipping Company Ltd. The relevant facts are as follows. On November 18, 1990 the appellant, Linden Management SA, shipped a cargo of ground nut extraction at Dakar, Senegal, for carriage to Rio Haina in the Dominican Republic. The cargo was loaded under a bill of lading incorporating the Hague Rules. The vessel was also carrying wheat pellets for carriage to San Juan, Puerto Rico and Rio Haina. Both the shipper and the carrier were unaware that the cargo of ground nut extraction was infested with Kharpa beetle at the time of shipment. There was no danger of the infestation spreading to the wheat but nevertheless rendered the vessel and its entire cargo subject to exclusion from countries where the cargo was to be discharged. Having discharged part of the wheat cargo at San Juan, the vessel proceeded to the Dominican Republic where she was put in quarantine. After two fumigations it was ordered to leave the Republic for San Juan. At San Juan the United States authorities ordered the carriers to return the cargo to its country of origin or dump it at sea. The carriers dumped the whole cargo, including the wheat cargo, at sea and after a further two fumigations was allowed, with a delay of some ten weeks, to load her next charter in the United States.

The primary question arising on these facts was where should loss fall. It was argued on behalf of the carriers that they were entitled to recover damages for delay to the vessel caused by the shipment of dangerous goods by the shipper and also the cost of fumigation. This claim, it was argued, could be made either under Article IV, r. 6 of the Hague Rules, or under the implied common law obligation on a shipper not to ship dangerous goods. In considering liability under both heads the House of Lords held that such liability was not fault-based. On the facts, even though the shipper had no knowledge of the dangerous nature of the ground nut extract, his liability was strict. The nature of liability under these obligations and the manner in which the House of Lords addressed them is discussed below.

THE IMPLIED COMMON LAW OBLIGATION

It is appropriate to discuss the implied common law obligation first. A shipper impliedly undertakes that he will not ship goods likely to involve danger without first communicating to the shipowner the nature of the danger. No obligation to notify the shipowner will arise where the shipowner ought to have been aware of the dangerous nature of the goods.[5] Thus, in *Brass v. Maitland,*[6] bleaching powder containing chloride of lime was shipped but during the voyage damaged other cargo as a result of corrosion of the casks in which shipment was taking place. The court held that it was a good defence that the shipowners knew that the casks contained bleaching powder, furthermore, had the means of knowing and reasonably might and could and ought to have known that it contained chloride of lime. The shipowners had the means of judging the adequacy of the casks and it was plainly negligence on their behalf in storing the bleaching powder where it would cause damage to other cargo.

On the question of neither party having knowledge of the dangerous nature of the cargo, Lord Campbell commented that, “it seems much more just and expedient that, although ***I.C.C.L.R. 137*** they were ignorant of the dangerous qualities of the goods, or the insufficiency of packing, the loss occasioned by the dangerous nature of the goods and the insufficient packaging must be cast upon the shippers than the shipowners.”[7] On the other hand, there was a powerful dissenting judgment by Crompton J. who felt that the duty did not extend to those cases where the shippers had no means of knowing that the goods were dangerous and were not guilty of negligence. “It seems very difficult that the shipper can be liable for not communicating what he does not know I entertain great doubt whether either the duty or the warranty extends beyond the cases where the shipper has knowledge, or means of knowledge, of the dangerous nature of the goods when shipped or where he has been guilty of some negligence as shipper, as by shipping without communicating danger, which he had the means of knowing and ought to have communicated.”[8]

Crompton J.'s powerful dissenting judgment in *Brass v. Maitland* did leave the decision somewhat doubtful. Indeed, this view was supported by a leading authority, *Abbott's Merchant Ships and Seamen,* where the authors of the text wrote that the views of Crompton J. were more in accordance with subsequent authorities.[9] More recently, in the United States a similar view was expressed in *Sucrest Corp. v. M/V Jennifer.*[10] In *Effort Shipping Co. Ltd,* Lord Lloyd upheld the majority decision in *Brass v. Maitland,* although the reasons for doing so are not entirely clear. Lord Lloyd's approach to the matter was somewhat brief and without reference to many authorities or a critical analysis of the decision in *Brass v. Maitland* itself. In the end, Lord Lloyd held:

The dispute between the shippers and the carriers on this point is a dispute which has been rumbling on for well over a century. It is time for your Lordships to make a decision one way or the other. In the end that decision depends on whether the majority decision in *Brass v. Maitland* should now be overruled. I am of the opinion, that it should not. I agree with the majority in that case and would hold that the liability of a shipper for shipping dangerous goods at common law, when it arises, does not depend on the knowledge or the means of knowledge that the goods are dangerous.[11]

It is very difficult to ascertain the reasons why the decision in *Brass v. Maitland* should have been upheld. Lord Lloyd only referred to incidental advantages in retaining the majority view in *Brass v. Maitland,* such as consistency with the liability under the Hague Rules. Whilst the House of Lords may have made a decision one way, the decision does leave some unresolved issues. The first is whether the retention of the ruling in *Brass v. Maitland* is necessarily consistent with the nature of liability under the Hague Rules. The second issue concerns the extent to which the decision in *Brass v. Maitland* can be taken as sufficient authority for strict liability. These matters are discussed below.

DANGEROUS GOODS AND THE HAGUE RULES

Express provision for the carriage of dangerous goods is found in Article IV, r. 6 of the Hague Rules.

Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier master or agent of the carrier, has not consented, with knowledge of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out or resulting from such shipment.

If any goods such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

Article IV, r. 6 envisages two types of situations. In the first place, the carrier's consent to the shipment has been obtained in ignorance of the inflammable, explosive or dangerous nature of the goods. In this case the carrier is entitled to land or destroy the goods without compensation to the shipper. The shipper is liable for all loss arising directly or indirectly from such shipment. The second situation deals with the shipment of cargo with knowledge and consent of the carrier but which subsequently becomes dangerous. The carrier is entitled to take the same measure to avoid the danger as in the first situation, however, in this case the shipper is not liable for any loss. The carrier can take action to avoid the danger without liability to the carrier except by way of general average.

Although r. 6 is straightforward enough, two questions which have caused the court problems are, “what is the meaning of dangerous goods?” and secondly, “what is the effect of Article IV, r. 3 on r. 6?” Article IV, r. 3 states:

The shipper will not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without, act, fault or neglect of the shipper, his agent or his servants.

The question arises as to whether r. 3 modifies liability under r. 6 into a fault-based one.

HAGUE RULES AND THE DEFINITION OF DANGEROUS GOODS

Although the Article IV, r. 6 speaks of “goods of an inflammable, explosive or dangerous nature”, the common law cases have interpreted the word “dangerous” in a broad manner. Goods may be dangerous even if they are not physically dangerous. Thus, goods may be dangerous if they are insufficiently packed thereby causing the cargo to leak and damage other cargo.[12] In *Mitchell, Cotts v. Steel*[13] on the question of shipment of cargo which renders the voyage illegal, or which might involve the ship in danger of delay, Atkin J. commented, it “is precisely analogous to the shipment of a dangerous cargo which might cause the destruction of the ship”.[14]

 In those cases where dangerous cargo has been specifically described, such as acids, explosives and so on, and then reference is made to the words “other dangerous cargo”, the question arises as to whether such words are to be construed *ejusdem generis.*[15] Article IV, r. 6 refers to “goods of an inflammable, explosive or dangerous nature”. Wilson writes, “[R] 6 appears somewhat narrow in scope than its common law counterpart, its application probably being restricted to goods which are physically dangerous, since the word ‘dangerous’ in this context must presumably be construed *eiusdem generis* with ‘inflammable’ and ‘explosive’.”[16] In *Effort Shipping Co. Ltd,* Lord Lloyd of Berwick approached the matter entirely on the basis of the common law cases, thereby rejecting construction *ejusdem generis.*[17] His Lordship referred to *Chandris v. Isbrandsten-Moller Co. Inc.*[18] where Devlin J. had to consider whether turpentine was a prohibited cargo within the meaning of a charter party for cargo of “lawful merchandise, excluding acids, explosives, arms, ammunitions or other dangerous cargo”. In rejecting the *ejusdem generis* rule applying automatically in the construction of documents, Devlin J. went on to state, “it seems to me that the only reason why the owner is objecting to acids, explosives, arms or ammunition is because they are dangerous, and that being so he may be presumed to have the same objection to all other dangerous cargo.”[19] In this respect Lord Lloyd held that, although the infested ground nut cargo had no risk of spreading to the wheat cargo, it was physically dangerous to the wheat cargo in that the dumping of the

wheat cargo at sea was a natural consequence of the shipment of the infested ground nut cargo.

THE RELATIONSHIP BETWEEN ARTICLE IV, R. 6 AND R. 3

It has already been seen that although Article IV, r. 6 governs the shipment of dangerous goods, r. 3 makes it clear that liability of the shipper is fault-based. So whilst the shipment of dangerous goods allows the carrier to take the preventative measures in r. 6, is the shipper to incur liability in those cases where he is not at fault, as for instance, where he has no knowledge of the dangerous nature of the cargo? The answer to this primarily rests on whether r. 6 can be treated as a free-standing provision or whether it is truly qualified by r. 3. This, being the more problematic question, has attracted two different sets of views. The first view is that taken in the United States, where writers and judges have concluded that liability is qualified by r. 3 thereby being fault-based. The second view, expressed *obiter* in a series of English decisions, suggests that liability is exactly the same as that under common law, that is, strict.20

It has often been argued that r. 6 is qualified by r. 3, thereby restricting the shipper's liability for the shipment of dangerous goods to those instances where he is at fault. In one leading English authority,21 Mustill J. thought that the United States authorities decided the matter in favour of shippers.22 This is supported by Wilford, Coghlin and Kimball who express in their text that r. 6 is clearly qualified by r. 3.23 Although the authorities referred to in coming to this conclusion do not directly address the question of the relationship between r. 6 and r. 3,24 it may well be right since the U.S. Carriage of Goods by Sea Act 1936 is regarded as a negligence-based statute.25 In *Serrano v. U.S. Lines Co.,*26 the United States District Court for the Southern District of New York held that Article IV, r. 3 had laid down a general principle of non-liability of the shipper in the absence of fault. The case, however, did not refer to r. 6 since there was no question of dangerous goods on the facts. In *General, SA v. P. Consorcio Pesquero del Peru SA,*27 where goods had been found to be dangerous, there was no need to discuss the relationship between Article IV, r. 6 and r. 3, since the carrier had consented to the carriage of the cargo which they ought to have known would cause damage.

In *Effort Shipping Co. Ltd,* the House of Lords unanimously held that Article IV, r. 6 was not qualified by r. 3. The principal judgments were delivered by Lord Lloyd and Lord Steyn, although arriving at the same conclusion on different grounds. Lord Lloyd treated the matter as purely one of construction of the Hague Rules. In his opinion the United States authorities simply did not decide the specific issue as to whether Article IV, r. 6 was qualified by r. 3.28 Treating the matter as one of construing Article IV, r. 6 Lord Lloyd went on to explain:

The first half of the first sentence of Article IV, r. 6 gives the carrier the right to destroy or render innocuous dangerous goods which have been shipped without his knowing their dangerous nature. Obviously that right cannot be dependent in any way on whether the shipper has knowledge of the dangerous nature of the goods. Yet the sentence continues, without a break, “and the shipper of such goods shall be liable.” It is natural to read the two halves of the first sentence as being two sides of the same coin. If so, then the shipper's liability for shipping dangerous goods cannot be made to depend on the state of his knowledge, his liability is not so confined to cases where he is at fault.29

In contrast, Lord Steyn, having regarded that the United States authorities did decide the matter in favour of shippers, so that Article IV, r. 6 was qualified by r. 3, went on to decide the matter purely from what may be described as a contextual aspect. In his view it was important to examine the position in England and the United States before the Hague Rules were introduced. With reference to a number of English authorities30 Lord Steyn concluded that the position in both jurisdictions had been clearly established before the Hague Rules31 and that position, strict liability of the shipper, was clearly understood by the framers of the Rules. If they wished to alter this position of strict liability they could have done so more appropriately, Lord Steyn commented:

What would the framers of the Hague Rules have done if collectively they had been minded

to adopt the step of reversing the dominant theory of shippers' liability for the shipment of dangerous goods? There is really only [one] realistic answer: they would have expressly provided that shippers are only liable in damages for the shipment of dangerous goods if they knew or ought to have known of the dangerousness of the goods. In that event the three parts of article IV, r. 6 would have to be recast to make clear that the shippers' actual or constructive knowledge was irrelevant to the carriers' right to land dangerous cargo but a condition precedent to the liability of the shippers for damages in the second part.32

Thus, in approaching the matter from a contextual approach, it was clear that Article IV, r. 6 was a free-standing provision which retained the strict liability rule established in the common law cases.

IS STRICT LIABILITY RULE APPROPRIATE?

In dismissing the shippers' appeal in *Effort Shipping Company Ltd,* the House of Lords have finally put to rest one of the most powerful dissenting judgments in the common law. There may be much to be said for Lord Campbell's view in *Brass v. Maitland* that, where neither party has the means of knowledge of the dangerous nature of the goods, the issue is purely one of the allocation of risk. However, whilst the House of Lords has refused to overrule the decision in *Brass v. Maitland,* there are a number of problems which still remain. It may well be appropriate to argue that in so far as English Law is concerned, what the House of Lords has done is to introduce a degree of consistency between the implied common law obligation not to ship dangerous goods and the Hague Rules. Yet, in coming to this conclusion the reasoning behind the arguments and justifications needs a little more careful analysis. There are a number of grounds on which the decision of the House of Lords can be questioned.

In the first place, let us go back to the decision in *Brass v. Maitland.* Was this really an authority for the view that there was an absolute obligation on the shipper not to ship dangerous goods without first informing the carrier? Furthermore, was the absolute obligation not to ship dangerous goods without prior notice equivalent to strict liability? It must be remembered that in *Brass v. Maitland* the facts of the case did not concern the situation of neither party having no knowledge of the dangerous nature of the goods. Lord Campbell held it to be a good defence that the shipowners knew that the casks contained bleaching powder, and had the means of knowing that it contained chloride of lime which could thereby be dangerous to other cargo. Whilst it is clearly settled that Crompton J. thought that the duty did not extend to cases where the shipper had no knowledge of the dangerous nature of the goods, did Lord Campbell go so far as saying liability was strict? It is doubtful that Lord Campbell meant that the duty not to ship dangerous goods was strict. There is nothing in his judgment to suggest that liability extended to the case where the shipper had no knowledge of the dangerous nature of the goods. The duty is only absolute in so far as the shipper has knowledge or ought to have knowledge. If this is the case, then the knowledge needs to be communicated unless, of course, the carrier ought to have known. The aim of the rule appears to apply to those cases where the shipper has knowledge of the dangerous nature of the goods but these may not become apparent to the shipper because of packaging or because of the specific nature of the goods which the shipper alone has the means of knowing that they are dangerous. In all the passages in the judgment of Lord Campbell in *Brass v. Maitland,* the presumption is that the shipper has knowledge or ought to have known. Consider the following passages of Lord Campbell's judgment in *Brass v. Maitland* :

The defendants, and not the plaintiffs, must suffer, if from the ignorance of the defendants a notice was not given to the plaintiffs, which the plaintiffs were entitled to receive, and from the want of this notice a loss has arisen which must fall either on the plaintiffs or on the defendants. I therefore hold the third plea to the bad.33

It seems to me much more just and expedient that although they were ignorant of the dangerous quality of the goods the loss occasioned by the dangerous quality of the goods should be cast upon the shippers than upon the shipowners.34

The word “ignorance” indicates a deliberate course of action as where the shipper simply

fails to pay any attention to the dangerous nature of the cargo. It is doubtful whether Lord Campbell was considering those cases where the shipper simply has no means of knowing that they are dangerous. In this respect there is much to be said for Crompton J.'s view that, “supposing that hay or cotton should be shipped, apparently in a fit state, and not dangerous to knowledge of the shippers or shipowners, but really being then in a dangerous state, from a tendency to heat, are the shippers to be liable for the consequences of fire from heating of such goods”?35 Related to this argument is the question of notice; how can notice be given without knowledge? Lord Campbell treats the matter as one of given notice, yet notice requires knowledge, whether constructive or actual, of the relevant facts. Furthermore, even if one examines the relevant authorities used by Lord Campbell in *Brass v. Maitland,* there is nothing in those authorities to suggest that liability extends to cases where the shipper has no knowledge of the dangerous nature of the goods nor has the means of ascertaining the same fact. The use of the word “notice” is clearly important in understanding that the nature of liability only extends to giving notice and such notice can only be given when there is some fact known or ought to be known to the shipper. Lord Campbell referred to Lord Tenterden's Treatise on ***I.C.C.L.R. 140*** Shipping,36 but no reference was made to the case of a shipper having no knowledge of the dangerous nature of the goods.

The second problem with the conclusion reached in *Effort Shipping Co. Ltd* is the lack of uniformity in interpretation of the Hague Rules. If we are to accept that the rule in the United States is that Article IV, r. 6 is qualified by r. 3, then we have two different interpretations of the Hague Rules which is clearly contrary to the principles of uniformity in the interpretation of an international convention. There may be much to be said about Lord Lloyd's approach that the dispute between Article IV, r. 6 and r. 3 is a matter of construction. On the other hand, Lord Steyn's contextual approach to the matter needs to be approached cautiously. It is not altogether clear why the rules and practices of the shipping world some 140 years ago should be used as the important indicia for the interpretation and adequacy of a rule today. We are often reminded by the then Honourable Mr Justice Devlin, who, commenting on the relationship between commercial law and commercial practice, wrote:

in truth it is only with much effort that law and practice upon any subject can be kept together, and that is because, though they have the same origin, they are in their motions attracted by different objects. Rigidity and a regular pattern are pleasing to the legal mind, and so soon as he can the lawyer sets up a system of principles and rules from which he is reluctant to depart. He may start close to his subject, but because it is alive, illogical and contrary, it is likely to slip and slither out of the pattern he devises for it. The danger in any branch of law is that it ossifies.37

One of the immediate consequences of the different views taken in the United States and England is the effect on general average. If the approach is taken that liability for the shipment for dangerous goods is fault-based, then the shipper's liability for the shipment of dangerous goods without knowledge would only restrict his liability to general average. In this instance, his marine insurance policy will provide for this contingency. In the case of strict liability, he will be entirely responsible for damages for the entire loss caused by the shipment of dangerous goods as in *Effort Shipping Co.* itself. In this respect, there is also the argument that the strict liability of the shipper not to ship dangerous goods produces an imbalance between the rights and duties of the shipper and carrier.

CONCLUSION

The English law position regarding the shipment of dangerous cargo is made absolutely clear by the House of Lords in *Effort Shipping Co. Ltd.* Liability is not fault-based and is not dependent on knowledge or the means of knowledge in so far as the shipper is concerned. Liability is the same for the purposes of the common law and the Hague Rules. Whilst the House of Lords may have put to rest a dispute between shippers and carriers on the point of liability for the shipment of dangerous cargo, it still leaves behind a number of unresolved matters. In so far as the Hague Rules are concerned it remains to be seen whether the approach taken by the House of Lords is necessarily consistent with the

interpretation of the Rules in other jurisdictions, most notably, the United States. The United States courts have treated the matter as one of fault rather than strict liability. Furthermore, the strict liability approach does produce an imbalance between the rights and duties of the shipper and carrier. Whilst Crompton J.'s powerful dissenting judgment has been finally put to rest, it is unfortunate that it has been done so without much recourse to what was actually being said by Crompton J. and Campbell J. in the 140-year-old decision in *Brass v. Maitland.*

I.C.C.L.R. 1998, 9(5), 136-140

1.

(1856) 26 L.J. Q.B. 29.

2.

The contemporary view taken in English law seems to be that liability for the shipment of dangerous goods is strict and is placed on the shipper, see *The Athanasia Comninos* [1990] 1 Lloyd's Rep. 277 and *The Fiona* [1993] 1 Lloyd's Rep. 257.

3.

[1998] 2 W.L.R. 206.

4.

Article IV, r. 6 makes express provision for the shipment of dangerous goods, Article IV, r. 3 holds that shippers will not be liable for loss sustained by the carrier unless it is the act, fault or neglect of the shipper. The relationship between these two rules is discussed later on. It is appropriate to note here that identical provisions are found in the revised Hague/Visby Rules.

5.

Bamfield v. Goole and Sheffield Transport Co. Ltd [1910] 2 K.B. 94.

6.

(1856) 6 E. & B. 470.

7.

ibid. at 486.

8.

ibid. at 492.

9.

(14th ed., 1901), p. 647. In so far as these later authorities, see, *per* Atkin J. in *Mitchell, Cotts & Co. v. Steel Bros. & Co.* [1916] 2 K.B. 610 at 614; see also Lord Ellenborough's dictum in *Williams v. East India Co. Ltd* (1802) 3 East 192 at 200.

10.

[1978] A.M.C. 2520.

11.

n. 3 above, at 217.

12.

e.g. Ministry of Food v. Lamport & Holt [1952] 2 Lloyd's Rep. 371, 382.

13.

[1916] 2 K.B. 610.

14.

ibid. at 614.

15.

Certain statutory regulations adopt this approach, s. 446 of the Merchant Shipping Act 1894 refers to “aquafortis, vitriol, naphtha, benzine, gunpowder and any other goods of a dangerous nature”. More recently, see Merchant Shipping (Dangerous Goods) Regulations

1981.

16.

Wilson, *Carriage of Goods by Sea* (2nd ed., 1993), p. 207.

17.

[1998] 2 W.L.R. 206, 210.

18.

[1951] 1 K.B. 240.

19.

ibid. at 246.

20.

See nn. 14 and 15.

21.

The Athanasia Comninos [1990] 1 Lloyd's Rep. 277.

22.

Although he expressed the view that in so far as he was concerned r. 6 is not qualified by r. 3. The same view was expressed by Judge Diamond Q.C. in *The Fiona* [1993] 1 Lloyd's Rep. 257, where it was held that the shipment of dangerous goods was an act of the shipper irrespective of fault or neglect.

23.

Wilford, Coghlin and Kimball, *Time Charters* (4th ed., 1995), p. 169.

24.

Serrano v. U.S. Lines Co., 1965 A.M.C. 1038; *William v. Compania Anonima Venezlona de Navigacion,* 1971 A.M.C. 2038; and *General, SA v. P. Consorcio Pesquero del Peru SA,* 1974 A.M.C. 2343.

25.

See *e.g. Sea-Land Service Inc.* v. *Purdy Co. of Washington,* 1982 A.M.C. 1593; and *Excel Shipping Corporation v. Sea Train International SA,* 584 F. Supp. 734 (1984).

26.

n. 24 above.

27.

n. 24 above.

28.

n. 3 above, at 212.

29.

ibid.

30.

Riverstone Meat Co. Pty Ltd v. Lancashire Shipping Co. Ltd [1961] A.C. 807; *Brass v. Maitland,* n. 6 above; *Bamfield* v. *Goole and Sheffield Transport Co. Ltd* [1910] 2 K.B. 94; and *Great Northern Railway Co. v. L.E.P. Transport and Depository Ltd* [1922] 2 K.B. 742.

31.

In so far as the United States, reference was made to *Pierce v. Winsor* (1861) Sprague 35, where the Massachusetts District Court had approved of the decision in *Brass v. Maitland* as sound doctrine.

32.

n. 3 above, at 222.

33.

n. 6 above, at 486.

34.

ibid.

35.

ibid. at 492.

36.

n. 6 above, at 486.

37.

P. Devlin, “The Relationship between Commercial Law and Commercial Practice” (1951) 14 M.L.R. 249 at 250.