

SCRUTTON ON CHARTERPARTIES AND BILLS OF LADING. 18th Edition.  
By SIR ALAN ABRAHAM MOCATTA, MICHAEL J. MUSTILL and  
STEWART C. BOYD. [London: Sweet & Maxwell. 1974, ci +  
624 pp. inc. Index. £12-00. S\$86.40]

This well-established book on the English law pertaining to the carriage of goods by sea marked its eighty-eighth anniversary with the appearance of the eighteenth edition. That it has had, and continues to have, no small measure of success — as witnessed by the fact that it was found necessary to have two impressions made of the last edition — is doubtless due to the solid foundation laid by the author, a famous commercial judge in his time, whose name has become so closely associated with the subject-matter of his work as to be virtually synonymous with it. The growing complexity in this field of shipping law is reflected by the gradual increase in the number of editors over the years, from the original author alone to two editors eighteen years later in 1904, and three editors sixty years later in 1964. The present edition is also the work of three editors, among whom is, as leading editor, Sir Alan Mocatta, a judge of repute in the Commercial Court of the Queen's Bench Division. Indeed, in the recent case of *The Evje* [1974] 2 All E.R. 874, the House of Lords unanimously affirmed the reasoning adopted by His Lordship in that case at first instance (reported in [1972] 2 Lloyd's Rep. 129) as to the effectiveness of the Centrocon arbitration clause to bar a claim for general average contribution, notwithstanding the considered disapproval of all members of the Court of Appeal.

Before we proceed with our examination of *Scrutton*, it may be wondered how relevant to local law an English work really is. Insofar as the area of carriage by sea is concerned, section 5 of the Civil Law Act (Cap. 30, Singapore Statutes, Rev. Ed. 1970) provides for the reception of English law in Singapore in cases where there is a hiatus in the local law. In practice, *Scrutton* will be found to contain much that will be applicable in Singapore.

The editors seem in the Preface to be apologetic over the appearance of a new edition when there has been little change in the law from the time the previous edition was published (1964): the only statute passed bearing directly on this area has been the Carriage of Goods by Sea Act, 1971, and the only truly significant case on a matter of some substance was the decision of the House of Lords on the meaning of "arrived ship" in *The Johanna Oldendorff* [1973] 3 W.L.R. 382. Moreover, the Carriage of Goods by Sea Act, 1971 is not yet in force in the United Kingdom (although a brief exposition of the Act is given in Section XXI, which may be of not inconsiderable interest to local lawyers\*), and, because of the date of the decision in *The Johanna Oldendorff*, this case was incorporated into the text only at the last moment, with the result that what should have been a full discussion of an important decision could only become a terse Note to Art. 71. However, the editors hasten to add that the work was principally undertaken "with the object of improving the arrangement of topics discussed, removing obsolete matter and dealing more fully with subjects which today seem most frequently to come up for consideration in practice."

This revised arrangement results in separate Sections on Agency (Sect. III), Charterparties (Sect. IV), The Bill of Lading as a Contract (Sect. V), Bills of Lading for Goods on a Chartered Ship (Sect. VI), Terms of the Contract (Sect. VII) and Time Charters (Sect. XVI), all embodying and expanding on material previously included in the last edition. Of these, I find Sections III and VI especially useful and illuminating: questions of agency raise interesting points of law in practice, as one often encounters various classes of agents, such as masters, chartering brokers, loading brokers, managing owners and forwarding agents, in this area of shipping law; and the difficult issues posed by the co-existence of two distinct contracts of affreightment (the charterparty and the bill of lading) are first clearly identified in "point" form, then succinctly but authoritatively dealt with in the course of Sect. VI. The separate treatment of time charterparties may appear anomalous, coming as it does well into the latter half of the book and without corresponding Sections specially devoted to demise and voyage charterparties, but is justifiable on the ground that the concept of hire as well as certain related clauses are traditionally found only in time charters, so that a satisfactory discussion of them cannot be wholly successfully integrated with, and as part of, the discussion of other topics in the book. Thus, time charters were previously dealt with in the body of Sect. X (Freight) of the seventeenth edition, but one had the impression that this arrangement was not a very happy one. The change from lettered to numbered footnotes makes for easier reading with a more modern lay-out, and is to be welcomed.

As regards the removal of obsolete matter, Art. 91 of the seventeenth edition is rightly omitted in its entirety, since the "legislative accident" of 1863 which was dealt with in previous editions had been corrected as far back as 1921. It is indeed surprising that editions subsequent to the latter date continued to include a discussion on this subject. However, it is regrettable that Apps. I (Forms of Bills of Lading) and II (Customs of British Ports) of the last edition do not appear in the present one: the old forms of bills of lading, interesting

\* See Ying, "The Hague Rules and the Carriage of Goods by Sea Act, 1972: A Caveat", *supra*, p. 86.

for their historical value, should not only have been retained but the Appendix supplemented with one or two modern standard form charterparties and bills of lading; and a list of judicial pronouncements on various customs would have been of more than academic interest, custom being apt to play an important role in shipping. On the other hand, the exclusion of the former App. VIII (South Africa) is unobjectionable.

Completely new material is introduced by Sect. XVII (Through Bills of Lading, Combined Transportation, Containers) — although Art. 22 of the seventeenth edition did touch lightly on through bills of lading — and Sect. XXI (The Carriage of Goods by Sea Act, 1971). It is disappointing that only one brief Article, which merely hints at possible problem areas, is devoted to the very topical subject of Containers, and while it may be pointed out that virtually all of the recent cases on containers, albeit North American, turn solely on the question whether a container can be considered a package or unit for the purpose of the limitation of liability under the Hague Rules, there is surely room for more scholarly guidance on other important areas untouched by common law or statute. Indeed, very recent judicial comment has indicated that it would be quite wrong to apply to a form of contract involving containers and intermodal transportation the old law originally developed in relation to bill of lading contracts (*per* Kerr J. in *J. Evans & Sons v. Merzario Ltd.* [1975] 1 Lloyd's Rep. 162).

Taking the current edition as a discrete entity the reader will discover all the standard topics and concepts ordinarily encountered in any legal textbook on the carriage of goods by sea. Even if unfamiliar with this field, he will not find *Scrutton* too formidable to comprehend: the principles of law are clearly stated in plain, straightforward language. Indeed, there is no mystique, nothing esoteric about this branch of the law, which is really part and parcel of the law of contract. Recognition by the editors of this simple truth is conveyed in the order of presentation of the contents: the first Section deals with the nature and construction of the contract while the last Section which discusses the existing substantive law (apart from Sect. XX on the Hague Rules) is Sect. XIX on Damages — surely topics familiar to any lawyer. The arrangement of the subject-matter between these two Sections follows a roughly chronological pattern. Thus, the parties involved enter into a contract of affreightment, be it a charterparty or a bill of lading, the terms of which may embody prior representations and may present certain difficulties of construction; the ship must usually be an “arrived” ship before questions of demurrage arise; after loading the cargo, the carrier will issue a bill of lading for the goods, which bill of lading may constitute a document of title; in the course of the voyage, the cargo may suffer damage, although the carrier may have protected himself or limited his liability under the contract, and the master may be obliged to incur a general average loss or expenditure on behalf of the various interests associated in the adventure; the port of destination having been reached, the rights and liabilities of the parties in relation to the unloading and delivery of the cargo must be ascertained, including those pertaining to the payment of demurrage, despatch money, damages for detention and freight; the carrier may exercise a lien on the goods to ensure payment of these charges. Doctrines normally analysed in any standard book on the law of contract receive adequate consideration in *Scrutton*, with all the authorities

naturally drawn in the main from this specialised area. For example, frustration is discussed in Art. 49, anticipatory breach in Arts. 81 and 189, and fundamental breach in Arts. 103 and 123. Indeed, the celebrated case of *Suisse Atlantique* on fundamental breach—commented upon in various parts of this edition—arose out of a dispute concerning a charterparty. As is done elsewhere in the book, the law on these subjects is correctly and lucidly set out, while the reader who is keen to pursue subtler points shrouded in ambiguity is referred in the footnotes to the wealth of cases thereon.

The closing Sections of the book are devoted to procedural matters that will be of more relevance to the U.K. than to the local context. There is a Section on the Carriage of Goods by Sea Act, 1924, but the reader is often referred to other parts of the book for a discussion of certain topics dealt with in the Act, which are also of general importance, e.g. the catalogue of exceptions under the Rules. This treatment, while underlining the special place occupied by the Hague Rules in English law, serves to illustrate the fact that they do not constitute a radical departure from established principles of law, but rather draw from and build upon them.

The scheme of *Scrutton* appears to be as follows: each Section introduces a defined area for analysis, and is sub-divided into Articles representing the main treatment of related topics within that area, qualified by Notes in smaller print, supported by authorities cited in footnotes and illustrated by the facts and decisions of cases arranged in an anonymously numbered order. It will be observed that cases are never referred to, mentioned or discussed as such in the body of the Article. As with former editions, the editors obviously intend the main text to form a concise, authoritative statement of the law as it stands at the time. To achieve this purpose, the wisdom of the judges as revealed over the years is distilled into short, pithy propositions expressed in simple, if stiff, language, and placed within easy reach of the inquisitive mind. The reasoning process is not disclosed, and one is expected to discover it consequent upon a conscientious examination of the cases cited in the footnotes. The practising lawyer anxious to find an accurate statement of the law will doubtless be delighted with *Scrutton*. On the other hand, this procedure results in rather lengthy and cumbersome footnotes adding terse explanations or caveats to the Article, and tends to break the continuity of a reader's train of thought: see, for example, fns. 87-91 to Art. 154, and fn. 22 to Art. 166. The Notes which follow the Articles are invaluable, as they either elaborate considerably on the main text (e.g. Notes 1-5 of Art. 103 dealing with the effect of excepted perils in the contract of affreightment), provide a more academic background to an issue (e.g. the Note following Art. 102 on the carrier's liability at common law), draw the reader's attention to an apparently unfair result caused by a logical application of the law as stated (e.g. the Note following Art. 157 on the several liability of each consignee or indorsee of a bill of lading for the payment of demurrage; Note 1 of Art. 159 on the non-distributive nature of a payment of advance freight) or voice the editors' reservations on or criticisms of what they feel to be the law (e.g. the Note following Art. 66 on the charterer's obligation to re-nominate a safe port).

Unfortunately, I must confess that I am not over-enamoured of this manner of presentation. I should much prefer the cut and thrust

of reasoned debate, so evident in the Notes and throughout many of the footnotes, transferred to the main text to enliven an otherwise monotonous style. Studious reading for a continuous period of time becomes progressively more difficult; for, while one may appreciate that a bald recital of the law without an indication of the reasoning involved cannot but fail to be inspiring, yet the effort required to direct one's attention from main text to Note, to footnote, to case summary — all written in differing styles — is likely to prove exhausting. On the other hand, it is probably true that the book aims at the practitioner, for whom it is eminently suitable, rather than the captious academic.

Let it, however, not be said that the editors' view of the law is erroneous, nor that their remarks and criticisms are inapposite. Indeed, *Scrutton* is a favourite of judges, who often cite in their judgments the propositions in the main text as providing an accurate summary of the law: to give a few examples, Hodson L.J. quoted with approval the first paragraph of Art. 1 in *The Assunzione* [1954] P. 150 at 190; Bucknill L.J. part of the second paragraph of Art. 7 in *The Ilissos* [1949] 1 K.B. 525 at 528; Donaldson J. the fourth paragraph of Art. 73 in *Christensen v. Hindustan Steel* [1971] 1 Lloyd's Rep. 395 at 398, 399. In fact, in respect of the last case, there was no direct authority settling the point prior to that case, and the statement in the text had therefore represented only the editors' calculated assessment of the law, which was subsequently verified. It is thus with much diffidence that I venture the following observations.

The editors submit that the principle enunciated in *Virginia Carolina Chemical Co. v. Norfolk & North American SS Co.* [1912] 1 K.B. 229 is not applicable to cases governed by the Hague Rules where the fire which causes loss or damage to cargo results from a want of due diligence to make the ship seaworthy, in view of the saving provision of s. 6(2) of the 1924 Act (s. 7 of the Carriage of Goods by Sea Act, Cap. 184, Singapore Statutes, Rev. Ed. 1970; s. 8 of Act 30 of 1972). It is, however, not made clear whether this submission is meant to be confined only to cases where the Rules are imposed by statute, or also to include cases where they are incorporated contractually. It is thought that the former interpretation is the correct one, since the relevant section of the Merchant Shipping Act relates to an exemption from, and not a limitation of, the carrier's liability within the meaning of Art. VIII of the Rules.

*The Angelia* [1973] 2 All E.R. 144 covers in helpful fashion three substantive issues: anticipatory breach, frustration and fundamental breach, besides requiring the construction of certain words in a charter-party. It is therefore regrettable that *Scrutton* contains no mention or discussion of this case, which was reported in early May, 1973. On the other hand, the fairly recent case of *V/O Rasnoimport v. Guthrie* [1966] 1 Lloyd's Rep. 1, important for a discussion of the liability of the shipowner's agent on signing bills of lading on the shipowner's behalf, and for an exposition of the nature of both common law and statutory estoppels in respect of statements as to quantity contained in bills of lading, is appropriately noted in Arts. 17 and 56, as well as in fn. 72 to Art. 58, where the editors also direct forceful criticisms, later pursued in fn. 75, against the seemingly "anomalous" principle laid down in *Grant v. Norway* (1851) 10 C.B. 665. Incidentally, the reader will observe that two of the editors

were closely involved in the former case: the leading editor as judge, and the second editor as counsel for the defendants.

The author's and editors' width of knowledge and experience is illustrated by their acquaintance with numerous unreported cases scattered through the work, e.g. *Hecker v. Cunard SS Co.*, *Thompson v. White*, *Stuart v. Bigland*, to mention a few. There is even a reference in Art. 58 to an apparently untraceable ruling by Roskill J. in chambers to support a proposition of some subtlety. *Hecker v. Cunard SS Co.* is cited as authority for the submission in the Note to Art. 63 that "loss of profit on goods shut out cannot usually be recovered" — a statement reiterated in the main text of Art. 191. However, fn. 53 to the latter Article refers the reader to the recent House of Lords decision in *Czarnikow v. Koufos* [1969] 1 A.C. 515 (one of the four cases of importance since the last edition mentioned in the Preface) and, while declaring that the statement in the text is retained from earlier editions, hastens to add that "it is considered that loss of profit might now be recoverable in an appropriate case on goods shut out." In view also of later statements in Art. 192, it might be wondered whether the comments in fn. 53 ought not to have been promoted to the main text, and the passage in the main text relegated to the footnotes.

Pursuing the unreported case mentioned in fn. 14 to Art. 53 is a frustrating venture. The reader is referred to p. 71 of the seventeenth edition, only to find the case briefly described as "an unreported case" — both nameless and dateless.

Mistakes in syntax (such as in line 3 of Art. 168, where "whose" would make better grammatical sense than "his") are happily all too rare, and proof-reading errors (e.g. "wtihout" in Note 1 of Art. 159 and the protruding margin of fn. 5 to Art. 158) are equally infrequent. Local lawyers will welcome the inclusion of the Privy Council decision in *Chan Cheng Kum v. Wah Tat Bank Ltd.* [1971] 1 Lloyd's Rep. 439 as a recent authoritative pronouncement on the nature and existence of a trade custom in shipments between Sarawak and Singapore, but may be disconcerted on finding this case constantly referred to as *Kum v. Wah Tat Bank Ltd.*, in ignorance of the Chinese custom regarding names. Preparation of the Table of Cases must have been a laborious task requiring consummate patience, so that the omission from the Table of *Satterthwaite v. New Zealand Shipping Co. (The Eurymedon)* [1972] 2 Lloyd's Rep. 544\* — a revealing case on the doctrine of privity of contract — mentioned in fn. 37 to Art. 117, is an understandable lapse. Throughout the book, the editors have opted for the spelling "Millerd" instead of "Millard" in the oft quoted case of *Gosse Millard v. Canadian Government Merchant Marine*, presumably since, out of all the reports of this case (including those in the King's Bench and the Court of Appeal), while only one sanctions the former spelling, it is the authoritative Appeal Cases that does so.

To sum up, this current edition of *Scrutton* builds on the enviable reputation established over the years by its predecessors and manages as before to compress a wealth of legal material, duly updated, inter-

\* This decision of the New Zealand Court of Appeal recently suffered a reversal in the Privy Council: see [1974] 1 Lloyd's Rep. 534.

woven with brisk, pointed comments into a single, modestly sized volume. It contains much that will interest all serious students of the law, be they registered at university or law school, in professional practice or in professorial posts. Its greatest appeal indubitably lies with those found in the middle category.

C. A. YING