

LOWNDES AND RUDOLF'S LAW OF GENERAL AVERAGE AND THE YORK-ANTWERP RULES. 10th Edition. Edited by JOHN F. DONALDSON, C.S. STAUGHTON and D.J. WILSON. [London: Stevens & Sons. 1975. xxv+544 pp. £17 net.]

Lowndes and Rudolf's Law of General Average and the York-Antwerp Rules is a book which needs little introduction. Since its first appearance in 1873 under the title, "The Law of General Average" it has become the standard work on the subject. Part of the British Shipping Law Series, the work is now in its tenth edition. The last edition was in 1964.

The need for this new edition, in the words of the editors were, "[F]irst to incorporate recent decisions of the courts; secondly, to comment on the changes made to the York-Antwerp Rules at the Hamburg Conference of 1974; and thirdly, to thoroughly revise the whole text (correcting solecisms where noticed)."

A brief introduction might be forgiven for the benefit of those uninitiated in this branch of the law. The Law of General Average deals basically with the adjustment of losses amongst parties interested

in a maritime adventure when any extraordinary sacrifice or expenditure has been intentionally and reasonably made or incurred for the common safety and for the purpose of preserving from peril the property involved in a common maritime adventure. "If, during a voyage, by stress of weather or otherwise, a vessel is in immediate danger of being lost, and part of the cargo or mast is cut away, as a means of preventing the total loss of vessel and cargo, that loss being incurred for the common benefit of all concerned, shall not be sustained by the owner of the ship alone, but by a general contribution from all." *Per Wilde C.J. Hallett v. Wigram* (1850) 9 C.B. 580 at 601.

Before the adoption of the first York Rules (1864), general average adjustments were made according to the law of the place of destination of the ship. This method of adjustment naturally gave rise to infinite difficulties as it would vary considerably from country to country. To avoid these difficulties a series of international conferences were held to work out a set of uniform rules which would be acceptable to the chief maritime nations. Since the movement started in 1860 with the Glasgow Conference we have seen the adoption of several sets of these rules.

It is an invariable practice nowadays to incorporate by reference the York-Antwerp Rules into Bills of Lading and Policies of Marine Insurance so that these Rules have now become an inseparable part of the law of general average. The York-Antwerp Rules can be divided into two sections. The first section comprising "lettered" Rules (Rules A to G) set out the general principles of what constitute a general average loss. This is followed by "numbered" Rules (Rules I to XXII) which deal with the details of general average adjustment. Since the last edition of this book in 1964, the York-Antwerp Rules (1950) have been replaced by the York-Antwerp Rules (1974) which was adopted at the Hamburg Conference of 1974. In the new rules no change has been made to the lettered rules but significant changes have occurred in the numbered rules.

The new edition has been revised and updated to incorporate the 1974 Rules. There is also a convenient comparative table of the 1924, 1950 and 1974 York-Antwerp Rules to provide at a glance the amendments and additions to the rules since 1924.

In the realm of case-law there have been several notable decisions since 1964. Amongst these is the case of *Australian Coastal Shipping Commission v. Green* [1971] 1 Q.B. 456. In this case the claims arose out of two separate policies of marine insurance covering two different ships owned by the same owners. In the first case the insured ship broke loose from her moorings during heavy weather while in the second the insured ship went aground. The facts following these events were similar in both these cases. In each case the owners' shore officer engaged tugs to tow the ships to safety. The tugs were employed under contracts containing the United Kingdom Standard Towage Conditions. One of the terms under the contract was an indemnity clause which made the hirer liable to indemnify the tug-owner for any damage or loss even though it arose through the negligence of the tugowner's servant. In the course of the towing operations the tow-ropes broke, fouling the tugs' propellers. The

insured incurred expenses in defending claims made under the indemnity clause and in indemnifying the tugowner. The shipowners made a claim under the policy for a general average loss. The main issues before the court were namely: (a) Whether the action of the shipowners' agents was a general average act within Rule A of the York-Antwerp Rules (1950) (as the parties have incorporated them by reference). (b) If it was, whether the loss was a direct consequence of the general average act within Rule C. The Court of Appeal held that the contract made by shipowners' agent with the tugowner was a general average act as it was a voluntary and reasonable measure taken at a time when the ship and cargo were in peril. Further, the contract containing the indemnity clause was a reasonable one and therefore the loss flowed directly from the general average act.

In deciding this last point, Lord Denning M.R. applied the following test, "If the master, when he does the 'general average act' ought reasonably to have foreseen that a subsequent accident of the kind might occur — or even that there was a distinct possibility of it — then the subsequent accident does not break the chain of causation. The loss or damage is the direct consequence of the original general average act." Applying this to the facts he came to the view that: "[i]n both cases before us, the master, when he engaged the tug, should have envisaged that it was distinctly possible that the towline might break and foul the propeller. When it happened, therefore, it did not break the chain of causation."

Lord Denning's statement would appear to have a much wider application than the facts of the case before him and the scope of this statement was considered in the recent Canadian case of *Eisenerz G.mb. H. v. Federal Commerce and Navigation* [1975] 1 Lloyd's Rep. 105.

This action arose under a voyage charterparty to carry a cargo of pig-iron from Sorrel, Quebec to Genoa, Italy. After sailing from Sorrel the ship grounded. The cargo had to be discharged to allow repairs to be made. Part of the cargo was lost and the other part became mixed when they were reloaded. The cargo-owners brought an action for the loss and damage to their cargo. The charterparty under which the pig-iron was carried had the usual clause which exempted the shipowners from liability for "... damage... from any act, neglect, default or error of judgement whatsoever of the Pilot, Master, Crew or other servants of the Shipowners in the management and/or the navigation of the Steamer." It also provided that general average was to be settled according to the York-Antwerp Rules (1950). The court found that the decision to unload the cargo was made for, "the benefit of ship and cargo alike and can therefore be described as a 'general average act' which was occasioned through negligent navigation of the vessel for which the owners are exempted from liability under the charterparty."

The further question which arose was whether the loss and damage to the plaintiff's cargo was a direct consequence of the general average act in view of the fact that the damage was caused by the negligence of the master in handling the cargo.

Ritchie J. who decided the case referred to Lord Denning's statement quoted above and said, "It appears to me that even if Lord Denning's view be accepted, it does not mean that a master is

to be relieved of responsibility for his own negligence by contending that it was 'reasonably foreseeable.' In my view, if it be shown that the loss or damage to cargo has been caused through the negligence of the master in carrying out the general average procedure, it can no longer be said that it was a direct consequence of the general average act. The chain of causation is broken by the intervention of a new cause and, in my view it cannot have been the intention of the committee which adopted the York/Antwerp Rules that a master should be able to claim a general average loss because he was able to foresee the possibility that he would be negligent."

In the case before him, the learned judge found that the charterer was entitled to succeed as it had not been proved that the loss and damage to the cargo was the direct consequence of the general average act as the combined negligence of the master, surveyors and stevedores have introduced a new cause to break the chain of causation which flowed from the general average act.

In view of these recent changes in the law, this new edition is indeed timely and will no doubt continue to be an indispensable companion to the practitioner of Shipping Law.