PAYNE AND IVAMY'S CARRIAGE OF GOODS BY SEA. 10th Edition. By E.R. HARDY IVAMY. [London: Butterworths. 1976. xxxi+312 pp. inc. Index. Cased £8.00, Limp £6.00]

The publishers have described *Payne and Ivamy* as "suitable for both Bar and Law degree students as well as those taking the examina-

tions of professional bodies such as the Institute of Export and the Institute of Chartered Shipbrokers." For the purposes of the second category of students, it doubtless suffices that a legal textbook nurtures them on the milk rather than on the meat of the law. As far as the first category is concerned, for the most part no emphasis is placed at the undergraduate level on a rigorous study of shipping law, much less this particular area of shipping law: Bar students are permitted only a cursory brush with it if they choose as one of their options for Part II the "Law of International Trade", in which carriage by sea forms merely one of eight topics to be considered, while undergraduate students in the universities or polytechnics may suffer a similarly limited exposure if they opt in their final year for, say, a course in "Commercial Law". It is only at the postgraduate level in a few British universities that a detailed examination of this area of the law is undertaken. Consequently, notwithstanding that the British merchant fleet currently ranks third in the world after Liberia and Japan and accounts for a fair proportion of international trade, that the volume of cases before the Commercial and Admiralty Courts there reflects the enormous amount of legal activity in this field as well as the high esteem in which English judicial decisions are held around the world, or that London is regarded as a centre for arbitration, this lack of emphasis in law curricula results in a dearth of adequate students' textbooks on the law of carriage of goods by sea. The weightier tomes of *Scrutton* or *Carver* are perhaps more properly regarded as reference or practitioners' books. *Payne and Ivamy* thus stands out today as the only up-to-date law students' book on the subject, at any rate so far as English law is concerned. It follows that students of Singapore law who are interested in this area will receive the tenth edition of *Payne and Ivamy* with much interest, since it is provided that the law here "shall be the same as would be administered in England in the like case, at the corresponding period, if [the] question or issue had arisen or had to be decided in England, unless in any case other provision is or shall be made by any law having force in Singapore."[1]

This edition faithfully incorporates the latest cases in the field, expanding the main text where new authority clarifies or amends existing law, and supplementing English cases with a fair sprinkling of American and Canadian cases, e.g. *The Irish Spruce*[2] and *The Mica*,[3] thus paying due respect to the transnational nature of the subject. Recent cases which the editor considers less significant or which simply apply established law are merely footnoted. The current edition retains everything from the previous one published four years ago that is still in force either as law or as practice, but amplification of the contents due to case law since 1972 has led to an increase in the number of pages from two hundred and eighty in the ninth edition to three hundred and twelve in the present one. On the other hand, this edition marks a substantial departure in the preparation and presentation of a Table of Cases from the previous one — regrettable from the students' point of view, but probably welcome from the publishers' — and this accounts for the sizeable decrease in the number

[1] Section 5(1), Civil Law Act, Cap. 30, Singapore Statutes, Rev. Ed. 1970.
[2] [1976] 1 Lloyd's Rep. 63 (District Court, Southern District of New York).
[3] [1975] 2 Lloyd's Rep. 371 (Federal Court of Canada). Local lawyers will also welcome the inclusion of the recent cases of *The Tarva* [1973] 1 Lloyd's Rep. 385 (Singapore High Court) and *The Straat Cumberland* [1973] 2 Lloyd's Rep. 492 (Kuala Lumpur Sessions Court).

of prefatory pages prior to Chapter 1. References for the cases cited are no longer given save in the text itself, and the former practice of including appropriate references to the English and Empire Digest is discontinued. As the new edition proclaims, it is now a *List of Cases* that is furnished, not a *Table of Cases.* Two other minor changes of form may be noted: Chapter 10, which was previously called "Demurrage and Damages for Detention", is now entitled "Demurrage and Despatch Money"; and the scheme of numbering footnotes is different. As regards the first change, I am inclined to think that the new title is as unhappy a choice as was the old, in the context of the editor's treatment of the topic: in this seventeen-page chapter, sixteen pages are devoted to an exposition of demurrage, while less than four lines are taken to complete the discussion of despatch money. Perhaps "Demurrage" or "Laytime" would have been adequate. The second change mentioned above represents a more orderly and systematic approach to numbering than did the haphazard scheme followed previously.

To the reviewer's mind, the most significant cases since the previous edition in 1972 have been two decisions of the House of Lords and two decisions of the Privy Council, viz. *The Johanna Oldendorff*[4] *The Evje*,[5] *The Eurymedon*[6] and *The Philippine Admiral.*[7] The first case altered the law on when a ship becomes an "arrived ship" for the purpose of the commencement of lay days, overruling an earlier House of Lords case, *The Aello*,[8] which had been criticised as being out of touch with modern shipping developments. The second confirmed Roskill J.'s view in *The Astraea*[9] that a claim for general average was a "dispute" within the meaning of an arbitration clause contained in a charterparty and was therefore subject to the time-bar specified. That decision had been reached contrary to the established practice of average adjusters, who subsequently found strong support in the Court of Appeal in *The Evje.*[10] The House of Lords, however, has now abolished all doubts by siding with Mocatta J. and Roskill J. *The Eurymedon* illustrates judicial willingness to give efficacy to commercial agreements by ingeniously circumventing the firmly established doctrine of privity of contract. Incidentally, readers may observe that the crucial "Himalaya" clause in the bill of lading considered in that case can be found in identical terms as clause 1 of the specimen bill of lading included as Appendix A of *Payne and Ivamy.* Lastly, *The Philippine Admiral* takes the bull by the horns in refusing to extend immunity to a foreign sovereign's trading vessel, thus overruling *The Porto Alexandre.*[11] *Payne and Ivamy* notes all four cases, giving greater emphasis to the first and third.

Besides case law, the most important development on the international scene has been the adoption at Hamburg of a revised set of York-Antwerp Rules in 1974. These Rules are reproduced in full as

4 [1973] 2 Lloyd's Rep. 285 (House of Lords).
5 [1974] 1 Lloyd's Rep. 57 (House of Lords).
6 [1974] 1 Lloyd's Rep. 534 (Privy Council from New Zealand).
7 [1976] 1 All E.R. 78 (Privy Council from Hong Kong).
8 [1961] A.C. 135.
9 [1971] 2 Lloyd's Rep. 494.
10 [1973] 1 Lloyd's Rep. 509.
11 [1920] P. 30.

Appendix G, replacing the 1950 Rules which appeared in the previous edition. More radical changes are in the offing with the possibility of a new Convention taking the place of the Hague Rules — the culmination of seven years' patient work by the United Nations Commission on International Trade Law. It is a pity that *Payne and Ivamy* gives absolutely no indication of this development, when already a Draft Convention has been drawn up: although since the editor has taken great pains to point out in various places that the U.K. Carriage of Goods by Sea Act 1971 is still not in force, presumably the more inquiring minds will look elsewhere for the enlightenment which it is beyond the scope of this work to give.

I must, however, confess that 1 find *Payne and Ivamy* wanting as a serious law students' textbook. While the editor has painstakingly compiled all the cases, old and new, in a comprehensible framework, and succeeds in stating the law as simply as possible, supplementing the text with eight very useful Appendices, there is most unfortunately a distinct lack of critical analysis or sustained discussion. For example, the text dealing with "The effect of unseaworthiness"[12] — which incidentally represents a more correct statement of the law than did the relevant part of the ninth edition, where it was blandly and simplistically declared,[13] "The undertaking as to seaworthiness is a condition precedent" — was considerably revised in the light of, and some fourteen years after, *Hong Kong Fir Shipping Co. Ltd.* v. *Kawasaki Kisen Kaisha Ltd.,*[14] but the case of *Stanton* v. *Richardson*[15] was subsequently mentioned as authority for the broad proposition that a breach of the implied undertaking of seaworthiness at the port of loading entitles the charterer to refuse to load.[16] This proposition is difficult to reconcile with the reasoning of the *Hong Kong Fir* case, although a narrower view of *Stanton* v. *Richardson* earlier accepted by the editor [17] would fit in nicely with the later case. However, the editor appears to accept both views of *Stanton* v. *Richardson* without appreciating the conflict, and the dubious distinction between the effect of a breach of the implied undertaking of seaworthiness and a breach of the express undertaking is, it is submitted, devoid of authority after the *Hong Kong Fir* case. Again, in his exposition of fourteen of the usual exceptions found in contracts of affreightment, the editor is content simply to list without comment "jettison"[18] and "act, neglect or default of the master, etc., in the navigation or management of the ship".[19] The latter exception has been often invoked, and though apparently widely worded has been judicially circumscribed. A leading House of Lords case on this point is *Gosse Millard* v. *Canadian Government Merchant Marine,*[20] of which surprisingly no mention is made at all. From time to time, one is left with the impression that *Payne and Ivamy* has nothing instructive to say, and that the editor has occasionally resigned himself to citing at length

[12] See 10th ed., pp. 15, 16.
[13] See 9th ed., p. 14.
[14] [1962] 1 All E.R. 474.
[15] (1874) L.R. 9 C.P. 390.
[16] See 10th ed., p. 17.
[17] *Ibid*., *p.* 16.
[18] *Ibid*., p. 152.
[19] *Ibid*., p. 155.
[20] [1929] A.C. 223.

without elaboration the exact words of a statute,[21] reciting trivia that jar with the tone of the formal setting in which they appear,[22] or laboriously repeating in the main text matter that is to be readily found in the Appendices.[23]

The Berkshire,[24] a case of recent date, is cited several times throughout the book, as a glance at the *List of Cases* might indicate. In one instance, it is given as authority (together with an older case) for the proposition that if the shipper knew of the existence of a charterparty, he is taken to have contracted with the charterer, and if he did not, his contract is with the shipowner.[25] With respect, this proposition is so sweeping as to be both erroneous and misleading, and on a careful reading, Brandon J.'s judgment in *The Berkshire* contains nothing to support it. It is submitted that, although *Payne and Ivamy* does not touch on them, the salient points of the decision on this particular issue are: firstly, on a true construction of the contract contained in the bill of lading, the demise clause in the contract gave the shippers notice that they were contracting with the shipowners in the circumstances, the charterers to be treated only as agents of the shipowners; and secondly, the charterers possessed the requisite authority from the shipowners (both by virtue of the charterparty and a letter written by the master) to conclude a contract on the shipowners' behalf on the terms that they did. The case is of interest, it is felt, in that Brandon J. found that a demise clause was not an extraordinary clause, but an "entirely usual and ordinary one",[26] so that the charterers could lawfully insist on its inclusion in a bill of lading under the general authority granted by the "employment" clause in a charterparty. In other jurisdictions, the demise clause has been castigated as attempting to subject the shipper to a fraud and conveying a false warranty of authority to contract,[27] and has been held invalid under the American Harter Act and legislation adopting the Hague Rules.[28]

Several other inaccuracies detract from the value of the book. For example, in the summary of *The Angelia*[29] at page 51, it is stated that "the charterers cancelled the charterparty on the ground that the cargo would not be available before the expiry of a frustrating time", whereas in fact it was the shipowners who cancelled the charterparty for the reason given. The proposition at page 53 for which *Ralli Brothers* v. *Compania Naviera Sota Y Aznar*[30] is cited as authority

[21] See, e.g. 10th ed., pp. 167-168, 176-177. The last page is devoted entirely to reproducing parts of Arts. IV and IV *bis* of the Hague-Visby Rules as adopted in the Carriage of Goods by Sea Act 1971, which is in fact wholly reprinted in Appendix H.

[22] See, e.g. *ibid*., pp. 28 (last paragraph), 29 (paragraphs beginning with "The River Plate" and "The Martin Garcia Bar").

[23] See *ibid*., pp. 194-203, where seventeen of the York-Antwerp Rules 1974 are quite unnecessarily set out in full, although the entire Rules are included in Appendix G.

[24] [1974] 1 Lloyd's Rep. 185.

[25] See 10th ed., p. 56.

[26] [1974] 1 Lloyd's Rep. 185 at 188.

[27] *Epstein* v. *United States of America (War Shipping Administration)* [1949] A.M.C. 1598 at 1601 (U.S. District Court, Southern District of New York).

[28] *Supra; The Anthony II* [1966] 2 Lloyd's Rep. 437 (U.S. District Court, Southern District of New York); *The Mica* [1973] 2 Lloyd's Rep. 478 (Federal Court of Canada, Trial Division): on appeal [1975] 2 Lloyd's Rep. 371.

[29] [1972] 2 Lloyd's Rep. 154.

[30] [1920] 2 K.B. 287.

should, it is submitted, be read subject to the proviso that the proper law of the contract is English, insofar as the illegality arises in a place of performance outside England. Footnote 6 to page 63 does not by its reference support the statement contained in the main text as regards the position of an indorse for value of a bill of lading subject to the Carriage of Goods by Sea Act 1924: the reference should have pointed to *Silver* v. *Ocean S.S.* Co.[31] on this issue. Inasmuch as the text at page 63 appears to confine the latter part of Article III, rule 4 of the Carriage of Goods by Sea Act 1971 to statements as to the order and condition of goods shipped, it is thought that the language of that rule does not so restrict its application. Dealing with the exception, "insufficiency of packing", *Payne and Ivamy* suggests at page 154 that this exception operates even when the loss is due to the insufficient packing of goods other than those actually damaged, invoking as authority Roche J.'s judgment in *Goodwin, Ferreira & Co. Ltd.* v. *Lamport and Holt*.[32] However, Roche J. explicitly based his decision on the application of the exception contained in Article IV, rule 2(q) of the 1924 Act, not on Article IV, rule 2(n) ("insufficiency of packing"),[33] and *Scrutton* has reservations whether the exception can be so widely construed,[34] while *Carver* is more emphatic that it cannot be.[35] Finally, it is hoped that the proof-reading and/or grammatical errors that appear to have been carried over from the previous edition will be corrected in future ones.[36] Local lawyers will also perhaps be gratified if the persistently incongruous mode of appellation of *"Kum* v. *Wah Tat Bank Ltd."*[37] is emended to *Chan* or *Chan Cheng Kum* v. *Wah Tat Bank Ltd.,* although by now this error appears to be universal.

That *Payne and Ivamy* is now in its tenth edition no doubt illustrates the popularity it enjoys with those anxious to acquaint themselves with the law pertaining to the carriage of goods by sea. For those who would be deterred by the bulk of the major works, it traces a simple path for all to follow. By marshalling relevant authorities to support the statements it makes, the book enables the law student to come to grips with first principles and the lawyer to look for the law. But there is surely room for improvement, and this reviewer concludes with the hope that future editions will abandon a predominatly expository stance in favour of a degree of critical evaluation of the subject-matter.

C.A. YING

[31] [1930] 1 K.B. 416 at 424-425 *(per* Scrutton L.J.), 432-433 *(per* Greer L.J.), 439 *(per* Slesser L.J.).

[32] [1929] All E.R. Rep. 623. It is felt that the headnote is misleading on this point.

[33] *Ibid.* at 627. Roche J. expressed his views on the exception of insufficiency of packing in such guarded language that his remarks should not be taken as authoritative on this point, and indeed his Lordship concluded, "But I do not decide the matter on that point [i.e. Art. IV, r. 2(n)] for the reason that clearly on the view I have expressed of the facts [Art. IV, r. 2(q) applies]."

[34] Scrutton, *Charter parties and Bills of Lading,* 18th ed., p. 436.

[35] Carver, *Carriage by Sea,* 12th ed., p. 250.

[36] For example, fn. 2, p. 105 ("applicable" should be "inapplicable": cf. 9th ed., fn. 13, p. 90); p. 106 ("do" should be "to" in 4th line of the summary of *A/S Sameiling's* case: cf. 9th ed., p. 91); p. 123, 2nd paragraph ("tendered for"? Cf. 9th ed., p. 106). Fresh errors include: fn. 1, p. 57 ("law" omitted after "English"); p. 168 (last paragraph); fn. 3, p. 205.

[37] [1971] 1 Lloyd's Rep. 439.