# The "Seaway"
# [2004] SGCA 57

**Case Number** : CA 35/2004

**Decision Date** : 29 November 2004

**Tribunal/Court** : Court of Appeal

**Coram** : Chao Hick Tin JA; Tan Lee Meng J

**Counsel Name(s)** : Steven Chong SC and Loh Wai Yue (Rajah and Tann) for the appellant; S Mohan and Bernard Yee (Gurbani and Co) for the respondent

**Parties** : —

*Admiralty and Shipping – Collision – Limitation action – Respondent's vessel colliding with appellant's wharf – Appellant suing respondent for negligence – Whether respondent's liability for damage caused to appellant's wharf subject to statutory limitation – Section 136(1)(d) Merchant Shipping Act (Cap 179, 1996 Rev Ed)*

*Statutory Interpretation – Construction of statute – Purposive approach – Statutory provision not ambiguous or inconsistent – Whether court may refer to extrinsic materials when interpreting statutory provision – Section 9A Interpretation Act (Cap 1, 2002 Rev Ed), s 136(1)(d) Merchant Shipping Act (Cap 179, 1996 Rev Ed)*

29 November 2004 *Judgment reserved.*

**Chao Hick Tin JA (delivering the judgment of the court):**

1 This appeal relates to the interpretation of s 136(1)(d) of the Merchant Shipping Act (Cap 179, 1996 Rev Ed) ("the MSA") which was raised as a preliminary issue pursuant to an application made by the appellant herein under O 14 r 12 of the Rules of Court (Cap 322, R 5, 1997 Rev Ed). The answer to the issue will determine whether the respondent is entitled to benefit from the limitation of liability prescribed in that section in relation to an incident where the vessel of the respondent, *Seaway*, damaged a wharf of the appellant.

**The facts**

2 The appellant, Shell Eastern Petroleum (Pte) Ltd, is the owner of an oil terminal at Pulau Bukom, a small island to the south of the main Singapore island. On 6 May 2002, the *Seaway*, in the course of navigation, collided with and damaged the appellant's wharf No 8. The loss suffered by the appellant was estimated at $16.15m. As a result, an action was brought by the appellant against the respondent as the owner of *Seaway* for the negligence of its servants or agents in the operation of the vessel.

3 Two pleas were entered by the respondent. First, it denied that its servants were negligent in the operation of the vessel. Second, it averred that, even if its servants were negligent, it was entitled to rely upon s 136(1)(d) of the MSA to limit its liability to only $607,927.68. The court was asked to determine, as a preliminary point, whether the respondent was indeed entitled to rely on the statutory limitation.

4 The issue came before the Assistant Registrar Tai Wei Shyong who ruled in favour of the respondent. On appeal by the appellant, Belinda Ang J upheld the determination, but on a different ground (see [2004] 2 SLR 577). The appellant has further appealed to us.

**Statutory provisions**

5 It will be expedient at this juncture to set out the relevant provisions of s 136(1) of the MSA:

> The owner of a ship shall not, where all or any of the following occurrences take place without his actual fault or privity:
>
> (a) where any loss of life or personal injury is caused to any person being carried in the ship;
>
> (b) where any damage or loss is caused to any goods, merchandise or other things whatsoever on board the ship;
>
> (c) where any loss of life or personal injury is caused to any person not carried in the ship through the act or omission of any person (whether on board the ship or not) in the navigation or management of the ship or in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers, or through any other act or omission of any person on board the ship; and
>
> ( d ) *where any loss or damage is caused to any property (other than any property mentioned in paragraph (b)) or any right is infringed through the act or omission of any person (whether on board the ship or not) in the navigation or management of the ship*, or in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers, or through any other act or omission of any person on board the ship,
>
> *be liable to damages* beyond the following amounts:
>
> (i) …
>
> (ii) in respect of such loss, damage or infringement as is mentioned in paragraphs (b) and (d), whether there is loss of life or personal injury or not, an aggregate amount not exceeding in the currency of Singapore the equivalent of 1,000 gold francs for each ton of the ship's tonnage.
>
> [emphasis added]

6 It will be noted that s 136(1)(d) is applicable to two situations, namely,

> (a) where any loss or damage is caused to any property, other than any goods, merchandise or other things on board the ship ("first limb"); or
>
> (b) where any right is infringed ("second limb"),

through the act or omission of any person in the navigation or management of the ship.

7 We should at the outset point out that the limitation of liability provided for in s 136 is only available to the owner of the vessel if the occurrence giving rise to the liability happened without the owner's "actual fault or privity". If it was due only to the negligence of the employees operating the ship, the owner will be entitled to rely on the statutory limitation of liability.

8 At the hearing below, the respondent took the position, as it has done before us, that the damage caused to the appellant's wharf by the respondent's servant's operation of the vessel fell within the scope of either of the two limbs of s 136(1)(d) and thus it should be entitled to the benefits of the limitation of liability prescribed under s 136(1), with the quantum to be computed in accordance with the tonnage of the vessel. The appellant contended otherwise and relied on the fact that but for an amendment Act enacted in 1981, there would have been a subsection (4) to s 136 and that the repeal of that subsection made all the difference.

9 At this juncture, it is necessary for us to trace the developments of s 136. The Merchant Shipping Ordinance ("the MSO"), a piece of legislation to consolidate and amend the law relating to merchant shipping, was introduced as a part of the law of Singapore in 1912. It was *in pari materia* with the UK Merchant Shipping Act 1894 (c 60) as amended by the Shipping (Liability of Shipowners and Others) Act 1900 (c 32).

10 In 1958, the UK accepted the International Convention Relating to the Limitation of Liability of Owners of Sea-Going Ships 1957 ("the 1957 Convention" or "the Convention" as may be appropriate) with a reservation on Art 1(1)(c). To give effect to the Convention, the UK enacted the Merchant Shipping (Liability of Shipowners and Others) Act 1958 (c 62) ("the 1958 UK Act").

11 Article 1 of the 1957 Convention provides:

> (1) The owner of a sea-going ship may limit his liability in accordance with Article 3 of this Convention in respect of claims arising from any of the following occurrences, unless the occurrence giving rise to the claim resulted from the actual fault or privity of the owner:
>
> (a) loss of life of, or personal injury to, any person being carried in the ship, and loss of, or damage to, any property on board the ship;
>
> (b) loss of life of, or personal injury to, any other person, whether on land or on water, loss of or damage to any other property or infringement of any rights caused by the act, neglect or default of any person on board the ship for whose act, neglect or default the owner is responsible or any person not on board the ship for whose act, neglect or default the owner is responsible …
>
> (c) any obligation or liability imposed by law relating to the removal of wreck and arising from or in connection with the raising, removal or destruction of any ship which is sunk, stranded or abandoned (including anything which may be on board such ship) and *any obligation or liability arising out of damage caused to harbour works, basins and nagivable waterways.*
>
> …
>
> (3) An owner shall be entitled to limit his liability in the cases set out in paragraph (1) of this Article even in cases where his liability arises, without proof of negligence on the part of the owner or of persons for whose conduct he is responsible, by reason of his ownership, possession, custody or control of the ship.
>
> [emphasis added]

12 Unlike the position in Australia, the UK did not reproduce Art 1 of the Convention as part of its domestic law. Instead, it formulated its own provisions to give effect to it. More will be said about

this later.

13 A few years later, in April 1963, the UK acceded to the 1957 Convention on behalf of Singapore, which was then a British Colony. However, what is of interest to note is that before the UK had formally made the Colony of Singapore a party to the Convention, the Legislative Assembly of Singapore had already, following the 1958 UK Act, by the Merchant Shipping (Amendment No 2) Ordinance 1959, repealed the then s 340 of the MSO and substituted in its place a new s 340. This new s 340(1) was in substance the same as what we see now in s 136(1), except that what were then ss 340(4) and 340(8) (reproduced in [30] below) were repealed by an amendment Act of 1981.

14 The first revised edition of the statutes of the independent Republic of Singapore was brought into being in 1970 and what was s 340 of the MSO was renumbered as s 295 in the Merchant Shipping Act (Cap 172, 1970 Rev Ed) ("the MSA 1970"). This 1970 revised edition did not bring about any material change to the provisions of s 295.

15 In September 1977, Singapore, as a sovereign independent state, by a formal instrument, informed Belgium, the depositary government of the 1957 Convention, that Singapore declared itself bound by the Convention with two reservations. The first was the right to exclude the application of Art 1(1)(c) and the second was to reserve unto itself the right to exclude the limitation of liability provisions for ships of less than 300 tons.

16 In 1981, by Act No 6 of 1981 ("the 1981 amendment Act"), what were then ss 295(4) and 295(8) of the MSA 1970 (previously ss 340(4) and 340(8) of the MSO) were repealed. These repeals were wholly consistent with the first reservation made by Singapore upon its formal accession to the Convention.

**Decision below**

17 The trial judge held that the respondent could not rely upon the first limb of s 136(1)(d) to limit its liability in relation to the damage caused to the wharf of the appellant by the *Seaway*. In coming to her conclusion, the trial judge had regard to the following:

(a) That the court was entitled to look into the historical development of s 136 as an aid in determining the meaning to be ascribed to the word "property" in s 136(1)(d) even though on the face of it, the meaning of that word was not ambiguous.

(b) The aim of the Legislature in repealing s 295(4) of the MSA 1970, which was previously s 340(4) in the MSO, was enunciated by the Minister in his statement to Parliament as follows:

> The amendment to the section on Limitation of Liability is to make shipowners wholly liable for the cost of wreck-removal and of repairs to facilities at the Port of Singapore Authority whenever there is an accident in its waters. … When we acceded to the Convention, we made the reservation that a shipowner should not be entitled to limit his liability in this way. But this reservation is not reflected in the existing legislation and the amendment is, therefore, necessary.

Thus, the deletion of s 295(4) must be viewed in its proper context and not in a vacuum.

(c) That Arts 1(1)(b) and 1(1)(c) of the 1957 Convention should be treated as mutually exclusive following the majority decision of the Supreme Court of Queensland, Australia in *The Tiruna* [1987] 2 Lloyd's Rep 666.

(d) That s 295(4) of the MSA 1970 reflected what was provided in Art 1(1)(c) and with the repeal of s 295(4), it must mean that damage caused to harbour works by a vessel, as well as salvage works, would not fall within s 295(1)(d), otherwise the deletion of s 295(4) would have been in vain.

(e) That the contention that s 295(4) related only to harbour works of a public authority, where strict liability applied, irrespective of fault, was not borne out by the plain wording of the subsection. No distinction between privately owned and publicly owned harbour works was drawn by the Minister in introducing the 1981 amendment Act to delete s 295(4). Nor was any such distinction alluded to in the explanatory statement accompanying the Bill which eventually was enacted as the 1981 amendment Act.

(f) Accordingly, in the light of the objective behind the 1981 amendment Act, as well as the express reservations made by Singapore upon accession in 1977, it would defeat the purpose of the reservation placed by Singapore if the court were to hold that the word "property' in s 295(1)(d) included harbour works.

18 However, the trial judge found that the respondent could rely upon the second limb of s 136(1)(d) to limit its liability. She held that the appellant's rights had been infringed by the respondent's ship *Seaway* colliding onto the appellant's wharf when the vessel was under the control of the respondent's servants or agents in the navigation and management thereof. The appellant was the legal owner of the wharf and its proprietary rights to the facilities were infringed due to the negligence of those on board the *Seaway*.

**Extrinsic materials**

19 Before us the main question canvassed by the parties remains the same as that advanced in the court below and it is whether the present claim of the appellant for damage to its wharf falls within either the first or the second limb of s 136(1)(d).

20 However, before we embark on the consideration of this issue, we will address a preliminary point raised by both parties. On behalf of the appellant, it is argued that while the ordinary meaning of the word "property" in the first limb is really quite clear and should include every conceivable thing other than the express exceptions, namely, "goods, merchandise or other things whatsoever on board the ship", the court is still entitled to refer to extrinsic materials, *eg*, the historical development of the section, to construe the meaning of s 136(1)(d) and determine its scope.

21 The extrinsic materials which the appellant contended this court should look at are:

(a) the legislative history of s 136;

(b) Art 1 of the 1957 Convention;

(c) the Minister's second reading speech in Parliament during the consideration of the Bill leading to the enactment of the 1981 amendment Act and the explanatory statement to the Bill;

(d) the *travaux preparatoires* of the 1957 Convention.

22 On the other hand, the respondent contends that the court should only resort to extrinsic evidence to assist in the interpretation where there is ambiguity. As far as s 136(1) is concerned, there can be no ambiguity as regards the word "property". Thus, no recourse to extrinsic materials

should be made.

23 In our minds, there can be no doubt that such extrinsic materials may be referred to to assist the court to arrive at an interpretation which will promote the purpose or object of the statutory provisions. Section 9A of the Interpretation Act (Cap 1, 2002 Rev Ed) expressly permits such recourse and it reads:

> (1) In the interpretation of a provision of a written law, an interpretation that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to an interpretation that would not promote that purpose or object.
>
> (2) Subject to subsection (4), in the interpretation of a provision of a written law, if any material not forming part of the written law is capable of assisting in the ascertainment of the meaning of the provision, consideration may be given to that material —
>
> (a) *to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law*; or
>
> (b) to ascertain the meaning of the provision when —
>
> (i) the provision is ambiguous or obscure; or
>
> (ii) the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law leads to a result that is manifestly absurd or unreasonable.
>
> (3) *Without limiting the generality of subsection (2)*, the material that may be considered in accordance with that subsection in the interpretation of a provision of a written law shall include —
>
> (a) all matters not forming part of the written law that are set out in the document containing the text of the written law as printed by the Government Printer;
>
> (b) any explanatory statement relating to the Bill containing the provision;
>
> (c) the speech made in Parliament by a Minister on the occasion of the moving by that Minister of a motion that the Bill containing the provision be read a second time in Parliament;
>
> …
>
> (e) any treaty or other international agreement that is referred to in the written law; …
>
> (4) In determining whether consideration should be given to any material in accordance with subsection (2), or in determining the weight to be given to any such material, regard shall be had, in addition to any other relevant matters, to —
>
> (a) the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law; and

(b) the need to avoid prolonging legal or other proceedings without compensating advantage.

[emphasis added]

24 In view of the fact that there is no English equivalent to s 9A of our Interpretation Act ("s 9A"), English cases which laid down principles as to the circumstances under which extrinsic materials may be resorted to by the court must be approached with some caution. For example, in the leading case of *Pepper v Hart* [1993] AC 593, the House of Lords by majority (with Lord Mackay of Clashfern LC dissenting) held, reversing earlier decisions, that references to Parliamentary speeches would be allowed. However, such references were permissible only if three conditions were satisfied. First, the legislation was ambiguous or obscure, or would lead to an absurdity. Second, the materials relied upon consisted of one or more statements by a minister or other promoter of the Bill together, if necessary, with such other parliamentary material as might be necessary to understand such statements and their effect. Third, the effect of such statements was clear. However, under s 9A, the first condition laid down in *Pepper v Hart* is not stated in such absolute terms. It is left very much to the discretion of the judge to determine whether it would assist in determining the purpose of a legislation by referring to parliamentary statements. Indeed, s 9A(2)(a) expressly allows the court to take into consideration extrinsic materials to confirm that the meaning of the provision is the ordinary meaning conveyed by the text taking into account the purpose underlying the written law.

25 The courts in Singapore had, in a number of cases, the occasion to apply s 9A, *eg*, *Constitutional Reference No 1 of 1995* [1995] 2 SLR 201, *L & W Holdings Pte Ltd v MCST Plan No 1601* [1997] 3 SLR 905 and *Planmarine AG v Maritime and Port Authority of Singapore* [1999] 2 SLR 1. These cases had held that a purposive approach to statutory interpretation could be resorted to even where the provision in question was not ambiguous or inconsistent. A purposive approach to statutory interpretation would invariably involve reference to extrinsic materials that may assist in the interpretation of the statutory provision.

26 Therefore the respondent's submission that this court should not consider extrinsic materials in interpreting s 136(1)(d) cannot be accepted. Neither do we agree that legislative history may be looked at only in relation to a consolidation Act. Section 9A is not so qualified. How useful a particular extrinsic material would be would depend on the issue and the fact situation. For example, in relation to parliamentary statements, they have to be "clear and unequivocal" to be of any real use: Lord Nicholls of Birkenhead in *R v Secretary of State for the Environment, Transport and the Regions, Ex parte Spath Holme Ltd* [2001] 2 AC 349 at 398. Ultimately, the weight to be given to each extraneous material is a matter for the judge to decide in the context.

27 Neither do we think that views such as those expressed by Chitty LJ in *Conservators of the River Thames v Smeed, Dean & Co* [1897] 2 QB 334 at 346 should be treated as statement of principles rather than just broad guidelines:

> The Act which we have to construe is a consolidating and amending Act; the general object of such Acts is to present the whole body of the statutory law on the subject in a complete form, repealing the former statutes. The principle of interpretation of a codifying Act is laid down by Lord Herschell in *Bank of England v Vagliano*: a statute codifying the law is to be interpreted as it stands, and recourse is not to be had to the former law, except upon some special ground, such, for instance, as an ambiguous provision. The same principle applies to such an Act as that which is now before us, but in a less stringent degree. In this Act clauses of the repealed Acts are found repeated, but often in altered form, and with amendments, whereby the sense may be in

great measure changed. Speaking generally, I think that the enactments must be dealt with as they now stand, and that a minute critical examination of repealed clauses ought not be entered upon for the purpose of interpretation, except upon special grounds.

28 In any case, enunciations such as the above by Chitty LJ should be treated all the more so in this way, bearing in mind the express provisions in our s 9A.

29 In relation to the present issue, it seems to us that the court ought to refer to extrinsic material to confirm that Parliament had intended to use the word "property" in s 136(1(d) in its natural and ordinary meaning. As mentioned above, s 295 of the MSA 1970 contained subsection (4) which was repealed in 1981. There is a need to understand why, if the word "property" in s 295(1)(d) was broad enough to cover "harbour works", there should be a specific subsection (4) to deem an occurrence, giving rise to liability on account of damage to harbour works, to be an occurrence within s 295(1)(d).

**First limb of s 136(1)(d)**

30 As indicated above, what is now s 136(1)(d) was originally enacted in 1959 as s 340(1)(d) of the MSO which was later in the 1970 revised edition of the Statutes of the Republic of Singapore renumbered as s 295(1)(d) of the MSA 1970. There is no difference in the substantive provision other than the renumbering. Nevertheless, in order to properly appreciate what is now s 136(1)(d), it is necessary to examine the changes brought about by the 1981 amendment Act and their significance. Before 1981, there were subsections (4) and (8) to s 295. These two subsections, which were repealed, read:

> (4) For the purposes of subsection (1) of this section, where any obligation or liability arises —
>
> (a) in connection with the raising, removal or destruction of any ship which is sunk, stranded or abandoned or of anything on board such a ship; or
>
> (b) in respect of any damage (however caused) to harbour works, basins or navigable waterways,
>
> the occurrence giving rise to the obligation or liability shall be treated as one of the occurrences mentioned in paragraphs (b) and (d) of that subsection, and the obligation or liability as a liability to damages.
>
> (8) The Minister may by order to be published in the *Gazette* make provision for the setting up and management of a fund, to be used for the making to the harbour or conservancy authority of payments needed to compensate it for the reduction in accordance with paragraph (a) of subsection (4) of this section, of amounts recoverable by it in respect of the obligations and liabilities mentioned in that paragraph and to be maintained by contributions from the harbour or conservancy authority raised and collected by it in respect of vessels in like manner as other sums so raised by it; and any such order may contain such incidental and supplementary provisions as appear to the Minister to be necessary or expedient.

31 The position under s 295(1)(d), prior to the enactment of the 1981 amendment Act, was that the owner of a vessel was entitled to limit his liability in damages for, *inter alia*, the loss or damage to property caused by the vessel, if the occurrence took place without the actual fault or privity of the owner. The then subsection (4) of the section provided that where liability arose on account of

"damage (however caused) to harbour works, basins or navigable waterways" or an obligation arose because of wreck removal *etc*, that occurrence "shall be treated" as an occurrence under subsection (1)(b) or (d) giving rise to a liability in damages. In fact, s 295(4) deemed two matters. The first was to deem that the occurrence, whether involving damage to harbour works or wreck removal, was an occurrence within s 295(1)(d). The second was to deem such a liability or obligation as a liability which sounded in damages.

32 The question to ask is why was it necessary for the Legislature to have deemed in s 295(4) that damage caused to harbour works by a vessel was an occurrence falling within s 295(1)(d) when, *prima facie*, such an event would fall within the plain meaning of s 295(1)(d)? If a private individual were to own and maintain a wharf, like the appellant in this case, and which wharf was damaged by a vessel, that would be an occurrence giving the owner of the wharf a right to institute an action in tort for damages. It would be wholly superfluous to deem such an occurrence to be an occurrence within s 295(1)(d) and to deem the liability as a liability which sounded in damages. One must not assume that the Legislature would enact a tautalogical provision like s 295(4). On the contrary, it would be reasonable to presume that the Legislature would not enact a wholly otiose provision.

33 Viewed in this light, it seems to us that the argument made by the respondent makes good sense. The respondent argued that the critical phrase in s 295(1) is "liable to damages". What it meant was that the subsection was concerned with an occurrence that sounded in damages. Events which gave rise to statutory debts, which a port authority could claim pursuant to statutory powers and which need not necessarily be based on the fault on the part of the employees on board the vessel, were not events which sounded in damages. Such statutory claims could not come within any of the limbs under s 295(1). Therefore, in order to make the defence of limitation of liability available to the owner of a vessel involved in such an occurrence, there was the need to enact s 295(4) to deem such a liability as falling within s 295(1)(d) and, in the case of wreck removal by the port authority, within s 295(1)(b).

34 The respondent said that following from this perspective, the repeal in 1981 of s 295(4) would mean that a statutory debt arising from an occurrence between a vessel and harbour works would not come within s 295(1)(d) and the shipowner would not be able to enjoy the limitation of liability prescribed in s 295(1). But a claim by a private harbour works owner, which would ordinarily be in negligence against the vessel causing the damage, would still fall within s 295(1)(d).

35 The English equivalent of s 295 (including subsection (4)) was s 503 of the UK Merchant Shipping Act 1894 as amended by the 1958 UK Act. Section 295 literally reproduced the amended s 503 as part of Singapore law. Here, it is germane to note that *Temperley on Merchant Shipping Acts* (7th Ed, 1976) ("*Temperley*"), in commenting on the English s 503, as amended, states at p 522:

> The liability to "damages" (to which limitation was confined by s 503 of MSA, 1894) *now includes any liability otherwise than in damages* arising in respect of any damage caused to harbour works, basins or navigable waterways and, *when the necessary statutory instrument is made, will include any liability, otherwise than in damages, arising in connection with the raising, removal or destruction of any ship* which is sunk, stranded or abandoned, or of anything on board such a ship. There is power to set up a fund to compensate harbour authorities for loss consequent upon bringing into force limitation of liability for wreck-raising charges. [emphasis added]

36 The reference to a compensation fund in the last sentence of the above passage in *Temperley* related to the same matter that was covered by s 295(8) of our MSA 1970 which was

repealed in 1981. From this passage, it would appear that the equivalent in the UK to what was in our s 295(4)(a) relating to wreck removal, *etc* was not brought into force. The significance of this passage lies in the comment that, by virtue of s 295(4)(b), *liability otherwise than in damages* arising in respect of any damage to harbour works would be included in s 295(1)(d). "Liability otherwise than in damages" can only refer to statutory claims. In the UK, their equivalent to our s 295(8) was never brought into force because the necessary statutory instrument to bring into being a compensation fund was never made.

37 However, to counter this approach, great emphasis was placed by the appellant on the Australian case of *The Tiruna* ([17] *supra*) where the plaintiff's vessel sank following a collision and it sued the defendant for wreck removal expenses. Australia, like UK and Singapore, had also made an express reservation to Art 1(1)(c) of the Convention. The defendant in *The Tiruna* averred that it was nevertheless entitled to limit its liability under Art 1(1)(b). The majority of the Supreme Court of Queensland held that as Australia had expressly by its reservation excluded the application of Art 1(1)(c), it must therefore mean that claims which arose in the circumstances mentioned in that provision (which include wreck removal and damage to harbour works) should not be subject to the limitation of liability. While the majority, McPherson and Kelly JJ, recognised that a claim for wreck removal expenses could come within the ordinary meaning of "loss of or damage to any other property or infringement of any rights" in Art 1(1)(b), they found that the three sub-paragraphs of Art 1(1) should be construed to be mutually exclusive. The majority were of the view that to hold that such a claim would still be subject to the limitation of liability on the basis that the claim could fall within the ordinary literal meaning of Art 1(1)(b) would defeat the clear intention of Australia in making an express reservation to Art 1(1)(c). In the circumstances, they thought that to apply the literal interpretation to Art 1(1)(b) would be absurd or unreasonable. McPherson J said at 688:

> The only rational explanation for … the omission of art. 1(1)(c) [by Parliament] … is that it was desired to exclude the wreck removal and other expenses specified in art 1(1)(c) from the ambit of claims for which a shipowner is entitled to limit his liability whether under art 1(1)(c) or otherwise.

38 Unlike the UK and Singapore, Australia gave effect to the 1957 Convention in a manner which is different from that adopted under the English s 503 and our s 340, which later became s 295. In Australia, the 1957 Convention was incorporated as a part of the domestic law by being included as a schedule to the Commonwealth Navigation Act 1912, with the exclusion of Art 1(1)(c). The three sub-paragraphs of Art 1(1) are not premised on the claims being sounded in damages, a concept of the common law. It was therefore logical for the court there to interpret Art 1(1) of the 1957 Convention as dealing with three separate and distinct categories of property claims.

39 On the other hand, in the UK and Singapore, the Legislature enacted its own special provisions to fulfil its obligations under the Convention. The main difference between the two approaches was noted by McPherson J in *The Tiruna* at 686–687 when he said that:

> … art 1 does not confine the shipowner's right to limit to circumstances in which he is "liable to damages". That being so, the basis for distinction made in *The Stonedale*, [1956] AC 1 between a statutory claim in debt for wreck removal expenses (which was not capable of limitation), and a common law claim for such expenses (which was capable of limitation) has now disappeared in Australia.

Because of the difference, in Australia, whether a claim in debt for wreck removal expenses was statutory or based on common law was of no significance.

40 Another material difference in the UK and Singapore approach was the presence of the deeming provisions in s 295(4), which are not present in Art 1 of the Convention. Kelly J, the other member of the majority in *The Tiruna*, aptly remarked (at 673) that the English cases "were decided under legislation which differs from that here under consideration".

41 However, the minority judge in *The Tiruna*, Macrossan J, found no difficulties in holding that wreck removal expenses could come under Art 1(1)(c). It is of interest to note the way he viewed the omission of Art 1(1)(c) as part of Australian domestic law and here we would quote him (at 677):

> A limitation arising under sub-cl (c) might apply to claims which would not fall within the joint coverage of pars (a) and (b), but it does not follow that the two areas are completely mutually exclusive. It is not at all an unlikely notion that in the original Convention scheme, the three paragraphs should have been decided upon for the effect which they would separately have, without its being considered in any way disadvantageous that some part of the coverage which one of them achieved might, arguably, have been provided under one or other of the remaining clauses. Of course, if a reading were suggested which gave *no* effect to one of the clauses beyond what flowed from the others, that would be a different matter altogether and would constitute sound reason for rejecting the suggestion. In short, the position may simply be that the decision to enact only sub-cll (a) and (b) depended upon a realisation that those two paragraphs, on a fair, unrestricted reading, provided all the coverage which was desired.

42 Arguably, the approach advocated by Macrossan J is not without some relevance in the interpretation of our s 295(1) and (4). Leaving that aside, and in view of the fact that the Singapore provisions were enacted in a form substantially and materially different from the 1957 Convention, it would not be quite so helpful to resort to Art 1(1)(c) to determine the meaning and scope of s 295(1) and the significance of the deletion of s 295(4) provided it must be constantly borne in mind that the court should not construe our statutory provisions in such a way as to cause Singapore to be in breach of the obligations it has assumed under the 1957 Convention. As Lord Denning MR said in *The Putbus* [1969] P 136 at 149:

> [T]he United Kingdom, when ratifying the Convention, made a reservation on this point. So we cannot get much guidance from the Convention in respect of wreck-raising or wreck-removal. We have to go by the Act of Parliament.

43 We will first consider what is the meaning and scope of ss 295(1) and 295(4). Section 295(1) (now s 136(1) of the MSA) provides that where an occurrence took place without the actual fault or privity of the shipowner and for which the shipowner is "liable to damages", the owner will be entitled to limit its liability in damages to the quantum prescribed therein. The significance of that part of s 295(1) is in the expression "liable to damages". Therefore, for any claim to come within s 295(1) and to be entitled to the benefit of limitation of liability laid down therein, the claim must be one that sounds in damages.

44 Turning next to s 295(4) (quoted at [30] above), it provided that where wreck removal took place, or damage to harbour works occurred, which gave rise to an obligation or liability, that occurrence would be treated as an occurrence within s 295(1)(b) and (d) and the obligation or liability as a liability in damages. Why was there a need to have such a deeming provision when negligent damage to harbour works would qualify as damage caused "to any property … through the act or omission of any person in the navigation or management of the ship" within s 295(1)(d)? If an occurrence arose on account of negligence on the part of the master who navigated a vessel, that fact would, *ipso facto*, have given rise to a claim in negligence which would be a claim sounded in damages. Parliament would not have provided anything in vain. The explanation for this deeming

provision must be that Parliament saw it necessary to bring within s 295(1)(b) and (d) claims which would otherwise not fall within the ambit of s 295(1). Such claims would be statutory claims or strict liability claims, such as by a port authority. A claim by a private wharf owner against a shipowner for damage caused to the wharf would already have been in negligence for damages. There would be no other basis for a claim by a private wharf owner. Thus, the only logical interpretation of the deeming provisions is that it applied only to claims which, without the deeming provision, would not be a claim in damages. Here again, we would refer to the observations of *Temperley*.

45 The trial judge noted that there was nothing in s 295(4) which expressly or by necessary implication suggested that it only applied to a statutory claim by a port authority. She concluded at [29] that "regardless of ownership of the harbour works, damage to harbour works, however caused, is within the ambit of [s 295(4)]". If this is the correct interpretation, it would render otiose a great part of s 295(4) as owners of private harbour works would already have a legitimate claim in negligence for the damage under general law. It meant that Parliament had unnecessarily made a deeming provision.

46 In contrast, in *The Putbus*, the English Court of Appeal held that even though the English equivalent of s 295(4)(a), while having been enacted, was not brought into force in England, the Dutch port authorities' claim for wreck removal costs nevertheless fell within the English equivalent of s 295(1)(d). If the appellant's argument herein is correct, that paras (b) and (d) of s 295(1) were mutually exclusive *vis-à-vis* s 295(4), then as the English equivalent of s 295(4)(a) was not brought into force, the Dutch port authorities' claim should not have been treated to come within s 295(1)(b) or (d) and be subject to the limitation. However, Edmund Davies LJ rejected the Dutch government's assertion that the claim for costs of wreck removal was not subject to limitation. He noted (at 154) that the English equivalent of s 295(4)(a) dealt with wreck removal costs regardless of negligence and that the provision left unaffected any obligation or liability in respect of wreck raising costs where the obstructing ship sank due to negligence. He said:

> As I view this case, the basic fact is that the *Stubbenkammer* [the obstructing ship] was confessedly at fault and that its owners are accordingly liable to the Dutch Government for the wreck-raising costs. But, submits Mr Lloyd, that means that the Dutch Government claim is one which arises, in the words of section 2(2) of the Act of 1958, "(a) in connection with the raising … of any ship which is sunk …" He then points out that (by virtue of section 2(5)) such a claim is not yet to be treated as an "occurrence" within section 503(1) of the Act of 1894 and submits that the liability in respect of it is accordingly not to be treated as "a liability to damages." I have come to the conclusion that that is a wrong approach. Section 2(2)(a) deals with obligations in respect of wreck-raising costs simpliciter and regardless of negligence. It leaves unaffected any "obligation or liability" in respect of wreck-raising costs where the obstructing ship has sunk owing to negligence. I answer the question posed by Viscount Simonds in *The Stonedale* in the same manner as the Master of the Rolls by saying that, where such negligence exists, a common law claim to recover wreck-raising costs sounds in damages. The liability would accordingly be one arising from the fact that "rights are infringed through the act or omission of any person … in the navigation or management of the ship" within the meaning of section 503(1)(d) of the Act of 1894, as amended by section 2(1) of the Act of 1958.

47 Edmund Davies LJ also remarked (at 152) that when the English equivalent of s 295(4)(a) should come into force, the result would be that where there was any liability to pay wreck removal costs *even though the shipowners' servants were not at fault*, that liability would have to be treated as one to pay damages and could be limited.

48 In *Stonedale No 1 v Manchester Ship Canal Co (The Stonedale No 1)* [1956] AC 1, a decision

before the UK Merchant Shipping Act was amended to give effect to the 1957 Convention, the House of Lords held that a shipowner was not entitled to limit its liability to the harbour authority's claim for wreck removal costs because the claim was for a statutory debt rather than for damages.

49 Equally germane is the case of *The Berwyn* [1977] 2 Lloyd's Rep 99, where the harbour authority claimed in negligence for damages for the costs in recovering the expenses of salvaging a vessel. In the alternative, it claimed the sum as a statutory debt. The English Court of Appeal noted that the English equivalent provision to our s 295(4) was intended to provide for limitation of liability in respect of statutory debts. However, as these provisions were, at the time, not yet brought into force, so the law which the court had to apply remained what it was declared to be in *The Stonedale No 1*.

50 For a shipowner to be made liable where his servants were not at fault could only mean strict liability, a liability owed to a port authority imposed by statute. It would be noted that under s 295(4), claims for wreck removal were treated in the same manner as claims for damage to harbour works, basins or navigable waterways. So the position regarding wreck removal as determined in *The Putbus* should also apply to liability arising from damage to harbour works.

51 In addition, the phrase "however caused" in s 295(4)(b) was not without significance. If s 295(4)(b) was meant to include privately owned harbour works, this phrase would make no sense in the context of a damage claim in negligence by a private harbour owner. If the private owner was not able to prove negligence on the part of the employees of the vessel that had damaged the wharf, he would have failed in the claim for damages. Why would Parliament then favour such a private harbour owner as compared with other owners of other property enumerated in s 295(1) where negligence on the part of the employees of the vessel would have to be proved? The purport of s 295(4)(b) would only make sense if it were to be confined to claims made by a port authority pursuant to statutory provision, in which eventuality liability could arise no matter how the damage to wharf was caused. Ordinarily, negligence must be proved. Otherwise it would mean that if a wharf was damaged due to extreme severe weather conditions and not due to the negligence of the employees' of the vessel, the vessel owner would still be liable in damages.

52 The cornerstone of the appellant's arguments is that as s 295(4)(b) deemed "harbour works" to be "property" and, following from the premise that Parliament does not enact anything in vain, it must mean that the word "property" in s 295(1)(d) could not include "harbour works". But when one reads s 295(4) more carefully, that was not what it provided. It did not treat or deem 'harbour works" as "property". What it deemed was that any obligation or liability, which arose on account of wreck removal or damage (however caused) to, *inter alia*, harbour works caused by a vessel, would be treated as an occurrence within s 295(1)(d), giving rise to a claim in damages. Thus the deeming provision related to the nature of the occurrence or liability rather than the nature of the property.

53 Accordingly, while the majority decision in *The Tiruna* may well be correct in the context of the Australian legislation which reproduced Art 1 of the 1957 Convention as a part of the Australian domestic law, we do not think it assists us in the interpretation of our statutory provisions. In the light of the decision in *The Putbus* and *The Berwyn*, we hold that sub-ss (1) and (4) of s 295 should not be held to be mutually exclusive and that the real object behind s 295(4) was to cater to statutory claims of a strict liability nature. To the extent that the judge below relied upon *The Tiruna* to hold that sub-ss (1) and (4) of s 295 are mutually exclusive, we think she has fallen into error.

***Legal void***

54 Counsel for the appellant argued that if it were true that s 340(4) of the MSO (later s 295(4)

of the MSA 1970) only effectively applied to a strict liability claim, then for the period between 1959 and 1963 there was no statutory provision for strict liability in favour of the port authority. He submitted that it would be absurd that Parliament would so enact a provision that would have no scope to operate as the Port of Singapore Authority Ordinance (Ordinance No 36 of 1963) ("PSA Ord 1963") which introduced that liability was only enacted in 1963. He contended that Parliament would not have enacted a deeming provision which would not have any application.

55 Quite apart from the question whether Parliament may or may not enact a law in anticipation of future developments, this argument is, however, factually incorrect. In 1959 there was then in force ss 86(1) and 86(2) of the Port Ordinance (Cap 208, 1955 Rev Ed), which read:

> (1) In every case in which any damage is done to any gate, bridge, pier, jetty, quay, wharf, warehouse, shed, graving dock, graving block, building or other work belonging to the [Singapore Harbour] Board by any vessel or by any of the persons belonging to or employed about any vessel, the amount of such damage may be recovered from such master or the owner of such vessel, where the claim does not exceed one thousand dollars, in a Magistrate's Court in a summary way, and, whatever may be the extent of such claim, by action at law in the High Court.
>
> (2) The Board may detain such vessel until such damage has been paid for or a deposit has been made by the master or owner of such vessel, equal in amount to the claim or demand made by the Board for the estimated amount of the damage so done by such vessel, or security has been given for the payment of the entire amount of such damage.

56 It would be noted that the liability of the vessel owner to pay for any damage was not dependent on negligence. Upon the coming into force of the PSA Ord 1963, the Ports Ordinance was repealed. What was in ss 86(1) and 86(2) of the Ports Ordinance was reproduced in s 26 of the PSA Ord 1963 as follows:

> (1) In every case in which any damage is done to any property of the [Port of Singapore] Authority by any vessel or float of timber or by any person employed in or about the same, the cost of making good such damage may be recovered by the Authority from the master, owner or person in charge of such vessel or float of timber.
>
> (2) The Authority may detain any such vessel or float of timber until the cost of making good such damage has been paid to the Authority or security has been given to the Authority for the amount thereof.

57 At the time, the equivalent English provision was s 74 of the UK Harbours, Docks and Piers Clauses Act 1847 (c 27):

> The owner of every vessel or float of timber shall be answerable to the undertakers for any damage done by such vessel or float of timber, or by any person employed about the same, to the harbour, dock, or pier, or the quays or works connected therewith, and the master or person having the charge of such vessel or float of timber through whose wilful act or negligence any such damage is done shall also be liable to make good the same; and the undertaker may detain any such vessel or float of timber until sufficient security has been given for the amount of damage done by the same …

While under this English section the vessel owner's liability for the damage was not dependent on negligence, to make the master liable, wilful act or negligence on his part must be shown.

***Ministerial speech***

58 We now move to consider the Minister's second reading speech in Parliament in relation to the proposed repeal of sub-ss (4) and (8) of s 295. He said:

> The amendment to the section on Limitation of Liability [s 295] is to make shipowners wholly liable for the cost of wreck-removal and of repairs to facilities at the Port of Singapore Authority whenever there is an accident in its waters.

59 The appellant and the court below placed much emphasis on the word "at" in the phrase "facilities at the Port of Singapore Authority". They pointed out that the Minister did not say "facilities *owned by* the Port of Singapore Authority". So what the Minister had in mind were facilities within Port of Singapore Authority ("PSA") waters and not PSA facilities.

60 We think it is clear that the statement of the Minister should be read in the following manner:

> The shipowner is to be wholly liable for the cost
>
> (a) of wreck removal; and
>
> (b) of repairs to facilities *at* the PSA,
>
> whenever there is an accident in its (PSA's) waters.

61 There can be no doubt that the term "Port of Singapore Authority" refers to the statutory authority created by the Port of Singapore Authority Act (Cap 173, 1970 Rev Ed) and known by that name. The reference to "facilities at the PSA" really meant facilities of or belonging to or operated by the PSA. If it was intended to refer to all facilities within the port, the Minister would have said "facilities within the port of Singapore". That would have been more natural.

62 A related point raised by the judge, and which was adopted by the appellant, is that the explanatory statement to the Bill, which eventually was enacted as the 1981 amendment Act, did not make any distinction between damage to publicly owned and privately owned harbour works. Neither did it mention PSA by name. The appellant argued that more importance should be given to the explanatory statement than to the Minister's statement in Parliament. Under s 9A of the Interpretation Act, both are aids to construction. There is no authority or principle that says that the explanatory statement is more important than the Minister's speech. At the end of the day, the court would have to determine, bearing in mind all the circumstances, which of the two aids, if at all, better assists the court in construing the statutory provision.

63 In this regard, the respondent also pointed out that the explanatory statement was not only cryptic, it was also not entirely accurate when it stated that the Bill was to amend the MSA 1970 by:

> … deleting subsections (4) and (8) of section 295 of the Act, being provisions which allow shipowners to limit their liability arising from or in connection with the raising, removal or destruction of any ship which is sunk, stranded or abandoned, and any obligation or liability arising out of damage caused to harbour works, basins and navigable waterways ...

Section 295(8) was not a provision allowing a shipowner to limit liability. It concerned the setting up of a fund to compensate the port authority for any shortfall arising from a shipowner's limiting liability for wreck removal claims under s 295(4) read with s 295(1)(b).

64 Be that as it may, even without reference to the Minister's speech, it is clear to us, for the reasons alluded to above, that the repeal of s 295(4) affected only claims by the port authority for wreck removal and damage caused to a wharf by a vessel pursuant to statutory powers where the cause of the occurrence was not relevant. Such claims by the port authority would not be and is not subject to the limitation set out in s 295(1). The Minister's speech is consistent with that view.

**Second limb of s 136(1)(d)**

65 We can be brief on the question of the applicability of the second limb to s 136(1)(d) of the MSA, namely, "or any right is infringed". It seems to us clear that when the wharf of a person is damaged by the operation of a vessel, the right of the owner of the wharf is infringed. On this, we would agree with the finding of the judge below. The only clarification we would make is this. If the interpretation of the judge below as to the first limb of s 136(1)(d) is correct, which is that the first limb of s 136(1)(d) (previously s 295(1)(d) of the MSA 1970) and the previous s 295(4)(b) were mutually exclusive, then it would be inconsistent to hold that damage caused to a wharf belonging to a private individual would not fall within the first limb but would fall within the second limb of s 136(1)(d). The same reasoning for excluding the first limb should have precluded the second limb from being applicable.

**Judgment**

66 In the result, we hold that s 136(1)(d) applies to the claim of the appellant. The appeal is accordingly dismissed with costs. The security for costs, together with any accrued interest, shall be released to the respondent to account of the latter's costs.

*Appeal dismissed.*