House of Lords before Lord Goff of Chieveley Lord Lloyd of Berwick Lord Steyn Lord Cooke of Thorndon Lord Clyde. 22nd January 1998,

LORD GOFF OF CHIEVELEY, My Lords,

1. I have had the advantage of reading in draft the speech prepared by my noble and learned friend, Lord Lloyd of Berwick. For the reasons he gives I would dismiss this appeal.

LORD LLOYD OF BERWICK , My Lords,

2. Three questions arise in this case. The first is as to the meaning of the words "goods of an inflammable, explosive or dangerous nature" in Article IV, r. 6 of The Hague Rules. The second is whether the shipper's liability for shipping dangerous goods under Article IV, r. 6 is qualified by the provisions of Article IV, r. 3. The third is whether, if the shipper is otherwise liable to the carrier on the facts of this case, he can escape such liability by relying on section 1 of the Bills of Lading Act 1855.

3. There is a fourth question. What is the nature and scope of any implied obligation at common law as to the shipment of dangerous goods? For reasons which will appear later, the fourth question does not need to be decided. But as it has been the subject of differing views over many years, and as we have heard full argument on the point, it seems desirable for us to express an opinion. Even though that opinion will not form part of the ratio decidendi, it may at least help to resolve a long-standing controversy.

4. The relevant facts are all agreed. On 18 November 1990 the appellant shipped a cargo of ground-nut extractions at Dakar, Senegal, for carriage to Rio Haina in the Dominican Republic. The ground-nut cargo was loaded in number 4 hold of the respondents' vessel "Giannis N.K." under a bill of lading which incorporates The Hague Rules. It is agreed that the groundnut cargo was infested with khapra beetle at the time of shipment. But this was unknown to the appellant shippers as well as the respondent carriers.

5. The vessel had previously loaded a cargo of wheat pellets in numbers 2 and 3 holds for carriage to San Juan, Puerto Rico and Rio Haina. There was no danger of the beetle infestation spreading from the ground-nut cargo in number 4 hold to the wheat cargo in numbers 2 and 3 holds. But the beetle infestation in number 4 hold nevertheless rendered the vessel and its cargo (including the wheat cargo) subject to exclusion from the countries where the cargo was to be discharged.

6. After discharging part of the wheat cargo at San Juan, the vessel proceeded to Rio Haina where she was placed in quarantine after the discovery of insects in number 4 hold. It was thought that the insects might be khapra beetles. The vessel was fumigated twice. But it did not eradicate the insects. Accordingly on 21 December the vessel was ordered to leave port with all her remaining cargo.

7. Meanwhile the vessel had been arrested by the receivers. It was only when the arrest was lifted on an undertaking given by the vessels P. & I. Club that the vessel was able to leave port. She returned to San Juan, in an attempt to find a purchaser for the cargo, in accordance with the Club's undertaking. But when she arrived at San Juan, the U.S. authorities identified a khapra beetle and a khapra beetle larva, both dead, in number 4 hold. On 31 January 1991 the U.S. authorities issued a notice requiring the carrier to return the cargo to its country of origin, or to dump it at sea, but at all events to leave U.S. ports. It is common ground that in those circumstances the carrier had no practical alternative but to dump the whole of the cargo at sea, including the wheat cargo. The vessel sailed on 3 February, and the cargo was dumped between 4 and 12 February.

8. When the vessel returned to San Juan after dumping her cargo there was a further inspection. Eighteen live khapra beetles and khapra beetle larvae were found in number 4 hold. There was a further fumigation. The vessel was eventually cleared to load under her next charter, at Wilmington, North Carolina after a delay of two-and-a-half months. The question is who is to pay for the delay?

9. Mr. Johnson Q.C., on behalf of the shippers, submits that the loss should lie where it falls. Mr. Schaff, on behalf of the carriers, submits that the carriers are entitled to recover damages for delay to the vessel, and the cost of the fumigations, either under Article IV, r. 6 of The Hague Rules, or by virtue of an implied term at common law. Longmore J. decided all questions in favour of the carriers, and so did the Court of Appeal. The shippers now appeal to the House by leave of your Lordships.

Dangerous goods and The Hague Rules

10. Article IV, r. 6 of The Hague Rules provides:

"Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place, or destroyed or rendered innocuous by the carrier without compensation and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any."

11. It is convenient to get two preliminary points out of the way. They are not in dispute.

First, it has been settled law since ***Chandris v. Isbrandsten-Moller Co. Inc***. [1951] 1 K.B. 240 that the word "*dangerous"* in the expression "*goods of . . .[a] dangerous nature*" must be given a broad meaning. Dangerous goods are not confined to goods of an inflammable or explosive nature, or their like. In ***Chandris v. Isbrandsten-Moller Co. Inc***. the question arose in relation to a consignment of turpentine. In that case the charter party

prohibited the shipment of "*acids, explosives, arms, ammunition or other dangerous cargo*." The shippers argued that "*other dangerous cargo*" should be given a restricted meaning. This was, they said, indicated by the context in which the words appear. Devlin J. said, at p. 246:

> *"I can find no such indication. It seems to me that the only reason why the owner is objecting to acids, explosives, arms or ammunition is because they are dangerous; and that being so he may be presumed to have the same objection to all other dangerous cargo."*

Secondly, goods may be dangerous within the meaning of Article IV, r. 6 if they are dangerous to other goods, even though they are not dangerous to the vessel itself.

12. What then is the meaning of the word "dangerous" in this context? Mr. Schaff argues that *"dangerous*" means, or at any rate includes, cargo which is physically dangerous to other cargo. Even though there was no risk of the infestation spreading from the groundnut cargo in number 4 hold to the wheat cargo in numbers 2 and 3 holds, nevertheless the groundnut cargo was physically dangerous to the wheat cargo because the dumping of the wheat cargo at sea was "*a natural and not unlikely consequence*" of shipping the groundnut cargo infested with khapra beetle: see para. 7(1) of the Agreed Statement of Facts.

13. Mr. Johnson, on the other hand, while conceding that the groundnut cargo caused physical damage to the wheat cargo in that sense, submits that there was no *direct* physical damage to the wheat cargo. Cargo is only dangerous within the meaning of Article IV, r. 6 if it causes, or is likely to cause, direct damage to other cargo by its own physical operation, for example, by overheating or leakage. Here, the only physical damage to the wheat resulted from the decision to dump the cargo at sea. That was a decision which was taken for commercial reasons. No doubt the decision was sensible, and perhaps unavoidable. But at the time the wheat was dumped it was sound. It had not been affected in any way by the inherent characteristics of the groundnut cargo.

14. I prefer Mr. Schaff's argument. I can see no reason to confine the word "*dangerous"* to goods which are liable to cause direct physical damage to other goods. It is true that goods which explode or catch fire would normally cause direct physical damage to other cargo in the vicinity. But there is no need to qualify the word "*dangerous"* by reading in the word "*directly",* which is what Mr. Johnson's argument in effect requires. Indeed the reference to "*all damages or expenses directly or indirectly arising out of or resulting from such shipment"* point in the other direction.

15. Longmore J., in an admirably clear and succinct judgment ([1994] 2 Lloyd's Rep. 171), found that the groundnut cargo was of a dangerous nature on shipment, on the ground that it was liable to give rise to the loss of other cargo loaded on the same vessel by dumping at sea. This finding was upheld by Hirst L.J. in the Court of Appeal: [1996] 1 Lloyd's Rep. 577. I find myself in complete agreement with their reasoning. Accordingly it is unnecessary to consider a further argument that goods may be of a dangerous nature even though they do not present any physical danger to ship or cargo, but are "*legally"* dangerous in the sense that they are liable to cause delay to ship and cargo through the operation of some local law.

16. What are the consequences of the finding that the groundnut cargo was physically dangerous to the wheat cargo? Since the carriers did not consent to the shipment of the groundnut cargo with knowledge of its dangerous character, the shippers are prima facie liable for all damages and expenses suffered by the carriers. But this brings me to the second question. Mr. Johnson argues that the shippers' liability under Article IV, r. 6 is qualified by the provisions of Article IV, r. 3. That rule provides:

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

17. It cannot have been intended, says Mr. Johnson, that shippers should incur unlimited liability for the shipment of dangerous goods when they did not know, and had no means of knowing, that the goods were infested. Shippers should only be liable in case of some fault or neglect on their part.

18. Mr. Schaff, on the other hand, argues that Article IV, r. 6 is a free-standing provision, covering the specific subject matter of dangerous goods. If the shippers' liability under Article IV, r. 6 was to be governed by Article IV, r. 3 one would have expected this to be made clear by the inclusion in Article IV, r. 6 of some expression such as "*subject to Article IV, r. 3."*

19. Longmore J. and the Court of Appeal rejected Mr. Johnson's argument, and so would I. The very breadth of Article IV, r. 3 ("*shall not be responsible for loss or damage . . . arising or resulting from any cause . . .*") makes it unlikely that it was intended to qualify the specific provisions of Article IV, r. 6: generalia specialibus non derogant. If Article IV, r. 3 was intended to have overriding effect, the framers of the rule had appropriate language to hand: see Article II which is expressly made subject to Article VI, and Article VI, which applies "notwithstanding the provisions of the preceding Articles." No such qualifying language is found in either Article IV, r. 6 or in Article III, r. 5.

20. But there is a more fundamental reason for rejecting Mr. Johnson's argument. The first half of the first sentence of Article IV, r. 6 gives the carrier the right to destroy or render innocuous dangerous goods which have been shipped without his knowing their dangerous nature. Obviously that right cannot be dependent in any way on whether the shipper has knowledge of the dangerous nature of the goods. Yet the sentence continues, without a break, "and the shipper of such goods shall be liable . . ." It is natural to read the two halves of the first sentence

as being two sides of the same coin. If so, then the shippers' liability for shipping dangerous goods cannot be made to depend on the state of his knowledge. His liability is not confined to cases where he is at fault.

21. Mr. Johnson rightly drew our attention to the law on this point in the United States. In ***Serrano v. U.S. Lines Co***. [1965] A.M.C. 1038 the United States District Court for the Southern District of New York held that Article IV, r. 3 had laid down "a general principle of non-liability of the shipper in the absence of fault." But there was no reference to Article IV, r. 6 in that case, perhaps because on the facts (a trailer with a defective tyre) the goods were not regarded as being dangerous goods. So the case does not help on whether Article IV, r. 6 is subject to Article IV, r. 3. ***Williamson v. Compania Anonima Venezolana de Navigacion*** [1971] A.M.C. 2083, a decision of the U.S. Second Circuit Court of Appeals, is another case of the same kind. It did not occur to anyone to argue that the defective slat in the cargo crate which gave rise to the personal injury in that case meant that the goods were dangerous goods. So no question arose as to whether Article IV, r. 6 was subject to Article IV, r. 3.

22. The point might have arisen in ***General S.A., General Trades Enterprises and Agencies v. P. Consorcio Pesquero del Peru S.A.*** [1974] A.M.C. 2343, a case concerning a cargo of bagged fishmeal. The cargo caught fire in the course of a voyage from Peru to East Germany. The goods were clearly dangerous goods. But it was held that the shipowners could not recover for damage to the ship, since they knew that the fishmeal was liable to spontaneous combustion, and had expressly consented to its carriage. So the question whether Article IV, r. 6 was subject to Article IV, r. 3 did not have to be decided. It is true that the court approved the *Serrano* and the *Williamson* cases. But, as already explained, there was no suggestion in either of those cases that the goods were dangerous goods within Article IV, r. 6.

23. Thus there appear to be no U.S. cases in which the relationship between Article IV, r. 3 and Article IV, r. 6 has fallen for decision, as indeed Mr. Johnson conceded. I am not forgetting that in the ***Athanasia Comninos*** [1990] 1 Lloyd's Rep. 277 Mustill J. considered that the U.S. cases to which I have referred answered the point in issue in favour of the shippers. But with respect I do not regard that as a correct reading of those cases.

24. Mr. Johnson pointed out how important it is that provisions of an international convention should, so far as possible, be given the same construction by the courts of different countries: see ***Riverstone Meat Co. Pty. v. Lancashire Shipping Co.*** *Ltd*. [1961] A.C. 807 *per* Viscount Simonds at p. 840. This is an argument which would carry great weight with me, if there were what Viscount Simonds called "*prevailing harmony*" on the other side of the Atlantic. But such is not the case. There is no generally prevailing view on the precise point in issue, either in the U.S. or in Canada: see ***Heath Steel Mines Ltd. v. The "Erwin Schroder"*** [1970] Ex. Cr. 426. Nor were we referred to any cases decided in other maritime jurisdictions.

25. Turning to the English cases, Mustill J. in ***The Athanasia Comninos*** [1990] 1 Lloyd's Rep. 277 expressed the view, obiter, that Article IV, r. 6 is not qualified by Article IV, r. 3. In ***Mediterranean Freight Services Ltd. v. B.P. Oil International Ltd. (the Fiona)*** [1993] 1 Lloyd's Rep. 257 Judge Diamond Q.C., sitting as a deputy Commercial Court judge, with all his great experience of this branch of the law, expressed the same view. I agree with those views, and accept Mr. Schaff's formulation as a correct statement of the law. Article IV, r. 6 is a free standing provision dealing with a specific subject matter. It is neither expressly, nor by implication, subject to Article IV, r. 3. It imposes strict liability on shippers in relation to the shipment of dangerous goods, irrespective of fault or neglect on their part.

26. If I am right so far, it becomes unnecessary to consider the meaning of the word "act" in the phrase "act fault or neglect of the shipper" in Article IV, r. 3. In **the *Fiona*** Judge Diamond held that the shipment of dangerous goods is an act of the shipper, whether or not the shipment of such goods was due to his fault or neglect. This would, if correct, afford an alternative ground for a decision in favour of the carriers in this case. However, in the United States it has been said that COGSA is a negligence statute, and not a strict liability statute, and that fault is therefore a prerequisite for recovery: see ***Sea-Land Service Inc. v. The Purdy Company of Washington*** [1982] A.M.C. 1593 cited with approval in ***Excel Shipping Corp. v. Seatrain International S.A.*** (1984) 584 F. Supp. 734 at p. 748. On this view the shipment of dangerous goods would not be an "act" of the shipper unless accompanied by fault or neglect. I prefer not to express an opinion as to which of these two views is correct. Since I have held that Article IV, r. 6 is not in any event subject to Article IV, r. 3, the point does not arise for decision.

27. Mr. Johnson referred us to the travaux preparatoires, which pointed, he said, clearly and indisputably to a definite intention among the framers of the convention that shippers should not be liable in any circumstances whatever without their fault or neglect. I hope he will forgive me if I do not follow him down that path. It does not seem to me that the history of the negotiations throws any light on the meaning of Article IV, r. 6. There was very little discussion of the Article, and no mention at all of whether it was intended to be subject to Article IV, r. 3.

Bills of Lading Act 1855

28. I now turn to the third question. Assuming against himself that the shippers were otherwise liable to the carrier for the shipment of the infested groundnuts, that liability was, says Mr. Johnson, divested when the property in the groundnuts passed to the receivers by endorsement of the bill of lading. In order to understand the argument it is necessary to set out verbatim the preamble and sections 1 and 2 of the Bills of Lading Act 1855.

"Whereas by the custom of merchants a bill of lading of goods being transferable by endorsement the property in the goods may thereby pass to the endorsee, but nevertheless all rights in respect of the contract contained in the bill of lading continue in the original shipper or owner, and it is expedient that such rights should pass with the property . . .

1. *Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.*
2. *Nothing herein contained shall prejudice or affect any right of stoppage in transitu, or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee by reason or in consequence of his being such consignee or endorsee, or of his receipt of the goods by reason or in consequence of such consignment or endorsement."*

29. The Act of 1855 has been repealed and replaced by the Carriage of Goods by Sea Act 1992. The point at issue is now expressly covered by section 3(3) of the Act of 1992. But we were told that there were a number of outstanding cases which are still governed by the Act of 1855.

30. The mischief to which the Act of 1855 was directed appears clearly enough from the preamble. A bill of lading is both a document of title and evidence of the contract of carriage. Whereas property in the goods will pass by virtue of the consignment or endorsement of the bill of lading, rights under the contract of carriage could not be enforced by the receiver of the goods by reason of the peculiar rule of English law that prohibits jus quaesitum tertio. Cases in the early part of the 19th century illustrate the inconvenience of the rule and the efforts of the courts to get round it. In the end it proved necessary for Parliament to take a hand.

31. It will be noticed that whereas the preamble refers, as one would expect, to the passing of rights under the contract, it says nothing about the passing of liabilities. One finds the same contrast in section 1. It provides for all rights of suit to be "*transferred to and vested in*" the holder of the bill of lading; it does not provide for the transfer of liabilities. Instead it provides for the holder of the bill of lading to be *subject to the same liabilities* as the shipper. It seems clear that this difference of language was intentional. Whereas a statutory assignment of rights under the bill of lading contract would represent but a modest step forward in pursuit of commercial convenience, a statutory novation, depriving the carriers of their rights against the shippers, and substituting rights against an unknown receiver, would have represented a much more radical change in the established course of business.

32. The legislative solution was ingenious. Whereas the rights under the contract of carriage were to be transferred, the liabilities were not. The shippers were to remain liable, but the holder of the bill of lading was to come under the *same liability* as the shippers. His liability was to be by way of addition, not substitution.

33. Mr. Johnson relied on the concluding words of the section "*as if the contract contained in the bill of lading had been made with himself."* He argued that by these words Parliament intended that the name of the shippers should be deleted as the shippers named in the bill of lading, and the name of the receivers substituted. I do not agree. In my opinion the words serve only to underline the legislative purpose, namely, to create an exception to the rule that only the parties can sue on a contract.

34. Much the strongest of Mr. Johnson's arguments depended on the language of section 2. Why, he asked, should Parliament expressly preserve the carrier's right to claim freight against the original shipper, if the shipper was to remain subject to all his original liabilities in any event? There is no very obvious answer to this question, other than that the words were inserted out of an abundance of caution. No doubt also the right to claim freight would be the right which would most readily spring to mind in the context of a shipper's liability. But whatever the historical or legislative explanation for section 2, I do not regard the express reference to the right to claim freight as excluding by implication the right to claim damages for shipping dangerous goods without the consent of the carrier. Indeed it might seem an odd result that the shippers should remain liable for the freight, but not for the consequences of shipping dangerous cargo.

35. As to authority, Mr. Johnson relied mainly on ***Smurthwaite v. Wilkins*** (1862) 11 C.B.N.S. 842. In that case the carrier claimed freight from an intermediate holder of the bill of lading. It was contended that, like the original shipper, the intermediate holder remained liable for the freight, although he had parted with all interest in the goods by selling them on to a third party, and endorsing over the bill of lading. Erle C.J. described such a consequence as "monstrous" and "clearly repugnant to one's notion of justice." Parliament could not have intended such a result. Erle C.J. did not deal with the position of the original shipper.

36. There is an unguarded observation of Williams J., on which Mr. Johnson relied, which might suggest that the endorsement of the bill of lading divests the original shipper of all his liabilities including, apparently, his liability for freight. But Williams J. cannot have meant this, in view of section 2 of the Act. His observation must have been intended to apply only to an intermediate endorsee, in which connection it makes good sense. I would respectfully disagree with the comment on ***Smurthwaite v. Wilkins*** in *Carver's Carriage by Sea* 13th ed. (1982) para. 95.

37. A year earlier Pollock C.B. had put the position accurately when he said in **Fox v. Nott** (1861) 6 Hurl. & Nor., 630 at 636: "*The statute creates a new liability, but it does not exonerate the person [i.e. the original shipper] who has entered into an express contract."*

38. More important, to my mind, than these early cases, are the views of the textbook writers, which, with the uncertain exception of *Carver* op cit are unanimous on the point. Many a claim must have been settled on the basis of the statement in the 19th ed. (1984) of *Scrutton on Charter Parties and Bills of Lading* at p. 28 and its predecessors: see now 20th ed. (1996) at p. 40. Insurance premiums must have been adjusted for many years on the same view of the law. I would be reluctant to disturb such a course of business unless convinced that the

textbook writers are wrong. In my view they are not. It follows that the shippers have not been divested of their liability for shipping dangerous goods by the operation of the Act of 1855. It is satisfactory that this conclusion accords with the recommendations of the Joint Law Commissions, and that the result would have been the same under section 3(3) of the Carriage of Goods by Sea Act 1992.

Shipment of dangerous goods at common law

39. Since the shippers are in my view liable in full for the consequences of shipping the infested groundnuts by virtue of Article IV, r. 6, the last question does not arise. But the question was fully argued, and although your Lordships are always reluctant to decide a point on which their views will be obiter, nevertheless it seems appropriate to make an exception in this case.

40. The point at issue arises because of a difference of opinion in ***Brass v. Maitland*** (1856) 6 E. & B. 470. The facts in that case were that the plaintiffs were owners of a general ship. The defendants shipped a consignment of chloride of lime, better known as bleaching powder, on board the plaintiffs' vessel. Chloride of lime is a corrosive substance liable to damage other cargo if it escapes. The plaintiff shipowners were unaware of the dangerous nature of the cargo. They claimed damages from the defendants on two counts. The third plea by way of defence was that the defendants had bought the goods from a third party already packed, and that they had no knowledge, or means of knowledge, that the packing was insufficient, and that they were not guilty of negligence. It was held by the majority that the third plea was bad in law. Lord Campbell C.J. said, at p. 481:

"Where the owners of a general ship undertake that they will receive goods and safely carry them and deliver them at the destined port, I am of the opinion that the shippers undertake that they will not deliver, to be carried in the voyage, packages of goods of a dangerous nature, which those employed on behalf of the shipowner may not on inspection be reasonably expected to know to be of a dangerous nature, without expressly giving notice that they are of a dangerous nature."

On the question whether absence of knowledge or means of knowledge on the part of the shippers is a good defence, Lord Campbell said, at p. 486:

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

Crompton J. took a different view. He would have held that knowledge on the part of the shipper is an essential ingredient of liability. At p. 492 he said:

"I entertain great doubt whether either the duty or the warranty extends beyond the cases where the shipper has knowledge, or means of knowledge, of the dangerous nature of the goods when shipped, or where he has been guilty of some negligence, as shipper, as by shipping without communicating danger which he had the means of knowing and ought to have communicated."

A little later he said, at p. 493:

". . . where no negligence is alleged, or where the plea negatives any alleged negligence, I doubt extremely whether any right of action can exist."

41. Mr. Johnson relies heavily on the dissenting judgment of Crompton J. and the commentary in the 13th edition (1892) of *Abbott on Shipping*, a work of great authority, where it is said that the powerful reasons urged by Crompton J. rendered the decision, to say the least, doubtful. In the 14th ed. (1901) it is said, at p. 647 that Crompton J.'s views are more in accordance with later authorities.

42. But when one looks at the later authorities, and in particular at ***Bamfield v. Goole and Sheffield Transport Co. Ltd***. [1910] 2 K.B. 94 and ***Great Northern Railway Co. v. L.E.P. Transport and Depository Ltd***. [1922] 2 K.B. 742 it is the majority view which has found favour. It was suggested by Mr. Johnson that ***Bamfield v. Goole*** and the ***Great Northern Railway*** cases can be explained on the ground that the plaintiffs in those cases were common carriers. That may or may not be a relevant distinction. What matters is that in both cases the court regarded itself as being bound by the majority decision in ***Brass v. Maitland*** 6 E. & B. 470 which was *not* a case of a common carrier.

43. Mr. Johnson advanced a number of more wide ranging arguments, that to hold the shippers strictly liable for shipping dangerous goods would be impracticable and unreasonable, and create an anomalous imbalance between the rights and liabilities of shippers and carriers. But equally strong arguments of a general nature can be advanced on the other side.

44. The dispute between the shippers and the carriers on this point is a dispute which has been rumbling on for well over a century. It is time for your Lordships to make a decision one way or the other. In the end that decision depends mainly on whether the majority decision in *Brass v. Maitland*, which has stood for 140 years, should now be overruled. I am of the opinion that it should not. I agree with the majority in that case and would hold that the liability of a shipper for shipping dangerous goods at common law, when it arises, does not depend on his knowledge or means of knowledge that the goods are dangerous.

45. An incidental advantage of that conclusion is that the liability of the shipper will be the same whether it arises by virtue of an implied term at common law, or under Article IV, r. 6 of The Hague Rules.

46. For the reasons mentioned earlier I would dismiss the appeal.

LORD STEYN , My Lords,

47. The answers to important questions arising in this case have been a matter of controversy in this country and elsewhere for many years. Moreover a divergence in approach between the courts of this country and the courts of the United States in regard to Article IV, r. 6 of the Hague Rules has emerged. In these circumstances I propose to explain the reasons for my conclusions. *Was the cargo "dangerous" within the meaning of Article IV, r. 6 of the Hague Rules?*

48. The first question is whether the cargo was "*dangerous"* within the meaning of Article IV, r. 6 of the Hague Rules as scheduled to the Carriage of Goods by Sea Act 1924. Having found that there was no damage to the vessel, Longmore J. concluded ([1994] Lloyd's Rep. 171, at 180):

   ". . . There was, however, damage to the other cargo since it had eventually to be dumped at sea and was totally lost. . . The rejection and subsequent dumping of other cargo on board the same vessel seem to me to be a natural and not unlikely consequence of shipping Khapra-infested cargo, which is thus dangerous in the sense of being liable to give rise to loss of other cargo shipped in the same vessel.

   *I therefore conclude that the ground-nuts shipped by the defendants were "**goods of a dangerous nature**" within art. IV. r. 6 of the Hague Rules."*

49. What made the cargo dangerous was the fact that the shipment and voyage was to countries where the imposition of a quarantine and an order for the dumping of the entire cargo was to be expected. In that sense the Khapra-infested cargo posed a physical danger to the other cargo. On that factual basis the judge ruled that as a matter of law the cargo was "of a dangerous nature" within Article IV, r. 6. I agree.

50. Given the somewhat philosophical debate at the Bar about the meaning of *"goods of . . . [a] dangerous nature*" in the context of notions such as attributes, properties and substance, I would mention only two practical matters. First, it would be wrong to apply the ejusdem generis rule to the words "goods of an inflammable, explosive or dangerous nature." These are disparate categories of goods. Each word must be given its natural meaning, and "*dangerous"* ought not to be restrictively interpreted by reason of the preceding words. Secondly, it would be wrong to detract from the generality and width of the expression *"goods of . . . [a] dangerous nature*" by importing the suggested restriction that the goods must by themselves, or by reason of their inherent properties, pose a danger to the ship or other cargo. For my part I would resist any temptation to substitute for the ordinary and non technical expression "*goods . . . of a dangerous nature*" any other formulation. Being in full agreement with the way in which Longmore J. approached and decided this point I need say no more about it.

Does Article IV. r. 6 provide a free-standing bundle of rights to carriers?

51. The question to be resolved is whether Article IV, r. 6 provides a free standing bundle of rights and obligations or whether those rights and obligations are qualified by Article IV, r. 3. The answer to this question is far from obvious.

52. Counsel for the shippers said that it is wrong to focus on Article IV, r. 6 in isolation and to form a presumptive view of its nature and scope on that basis. I agree. Like Longmore J. and Hirst L.J. I proceed to consider Article IV. r. 6 and Article IV, r. 3 in the context in which they appear. Article IV, r. 3 is cast in negative form. It provides for an immunity in favour of the shipper for loss sustained by carrier "*from any cause without the act, fault or neglect of the shipper."* It is a general provision. Article IV, r. 6 is a very specific provision. It falls into three parts. The first part allows the carrier to land, destroy or render innocuous goods of a dangerous nature to the shipment of which the carrier has not consented. The carrier may exercise this liberty without incurring any liability to pay compensation. The second part makes the shipper liable for all expenses directly or indirectly *arising from such shipment*. The words which I have underlined seem to be a reference back to a shipment as described in the first part. The third part concerns shipment of goods to which the carrier has consented with knowledge of their nature and character but which become a danger to the ship or cargo. Again the carrier is allowed to land, destroy or render innocuous the goods without incurring any liability "*except to general average, if any*." In such cases, however, the shipper is not liable in damages to the carrier.

53. That brings me directly to the competing arguments. Counsel for the owners said that Article IV, r. 6 is not expressed to be "*subject to Article IV, r.* 3" and suggested that this omission is significant. Counsel for the shippers put forward the counter argument that Article IV, r. 6 could have been introduced as applying "*Notwithstanding Article IV, r. 3."* Judged simply as language that could have been used, but was not used, I regard these points as self cancelling makeweights. Counsel for the owners also drew attention to Article IV, r. 5 which provides that the shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him. Plainly this provision imposes a free-standing and absolute obligation on shippers. The owners pointed out that Article IV, r. 3 is not expressly made subject to Article IV, r. 5. They argued that this factor supports the argument that Article IV, r. 3 also does not qualify Article IV, r. 6. This is a type of argument that might have some attraction in the construction of a conveyancing document. But in the interpretation of a multi-lateral trade convention it is a rather insubstantial point on which I would not wish to put any weight. The search ought to be for more secure footholds on which to make a judgment in regard to the meaning of provisions in the Hague Rules.

54. This much we know about the broad objective of the Hague Rules: it was intended to reign in the unbridled freedom of contract of owners to impose terms which were *"so unreasonable and unjust in their terms as to exempt from almost every conceivable risk and responsibility"* ((1992) 108 L.Q.R, 501, at p. 502); it aimed to achieve this by a pragmatic compromise between interests of owners and shippers; and the Hague Rules were designed to

achieve a part harmonization of the diverse laws of trading nations at least in the areas which the convention covered. But these general aims tells us nothing about the meaning of Article IV, r. 3 or Article IV, r. 6. One is therefore remitted to the language of the relevant parts of the Hague Rules as the authoritative guide to the intention of the framers of the Hague Rules.

55. Counsel for the owners relied on two factors of substance in support of his submission that Article IV, r. 6 is a free-standing provision. First, the immunities provided for in Article IV, r. 3 are expressed in language of generality. On the other hand Article IV, r. 6 spells out a specific bundle of rights in respect of the shipment of goods which may become a danger to the ship or cargo. Counsel for the owners relied on the generalia specialibus non derogant principle which informs the drafting techniques of English Parliamentary draftsmen. The point can, however, be put on a broader basis. In our daily lives we do not necessarily regard general instructions as impinging on specific instructions. Similarly, in the construction of documents we may proceed on a initial premise that a general provision does not necessarily qualify a specific provision in the same document. That common sense consideration also applies to international conventions. But it is not a mechanical rule. Everything depends on the context. And ultimately the matter is one of judgment. In the present case my view is that the contrast between the generality of Article IV, r. 3 and the specificity of Article IV, r. 6 goes some way to supporting the proposition that the latter ought be construed as free-standing. But I am not saying that on its own this is a decisive factor in favour of the interpretation put forward by the owners. The second point of substance is the argument that Article IV, r. 6 in its three different parts points in a similar direction. The right given in the first and third parts to the carrier to land, etc, dangerous cargo cannot sensibly depend on whether the shippers knew or ought to have known of the dangerous nature of the cargo. That would be impractical: the carrier must be able to land, etc, dangerous cargo irrespective of his shippers actual or constructive knowledge. Counsel for the shippers did not dispute this proposition. But he said that this liberty to land dangerous cargo already existed under the common law. That is no answer: pro tanto the Hague Rules upon their enactment displaced the common law. It follows that the liberty to land dangerous cargo under the first and third parts derives exclusively from Article IV, r. 6. And in respect of the first and third parts it exists irrespective of the actual or constructive knowledge of the shippers. If one were now to accept the shippers' argument there would be this difference between the first and third parts as contrasted with the second part: only in respect of the second part would the rights of the owners be conditional upon the actual or constructive knowledge, or due diligence, of the shippers. But this is prima facie implausible because the rights to land, etc, dangerous cargo, and to claim damages seem to arise in the same circumstances. Indeed the second part in imposing liability for damage resulting from "such shipment" refers back the "shipment" of dangerous cargo, etc, in the first part. The natural construction is therefore that in neither the first nor the second parts (or for that matter the third part) are the rights of owners conditional upon the actual or constructive knowledge, or due diligence, of shippers. This is a point of some weight.

56. Cumulatively, the two factors identified in the last paragraph point to Article IV, r. 6 being of a free-standing nature. But now I have to set against this initial impression three matters upon which counsel for the shippers relied. First there are the decisions of the courts of the United States to which my noble and learned friend Lord Lloyd of Berwick has referred. Counsel for the owners criticised the reasoning in some of those cases. For my part I regard it as unnecessary to discuss these cases in detail. I have found the analysis of the position in the United States in Wilford, Coghlin and Kimball, *Time Charters*, 4th ed., (1995), at pp. 169 and 173-176, of assistance. Mr. Kimball is the senior partner of a New York law firm and a distinguished maritime lawyer. No doubt he was responsible for the separate discussions of United States law in this book. It is stated in this book that the courts in the United States have taken the view that Article IV, r. 3 qualifies Article IV, r. 6: at 169. Like Mustill J. in ***The Athanasia Comninos*** [1990] 1 Lloyd's Rep. 277 I am satisfied that this is the established position in the United States. That is a weighty factor against my initial view that Article IV, r. 6 contains a bundle of free-standing rights in favour of the owners. In the construction of an international convention an English court does not easily differ from a crystallised body of judicial opinion in the United States.

57. That brings me to the argument for the shippers based on the travaux preparatoires of the Hague Rules. Those materials are now readily accessible: see Michael F. Sturley, ***The Legislative History of the Carriage of Goods by Sea Act and The Travaux Preparatoires of the Hague Rules*** (1990) Volumes 1-3. Although the text of a convention must be accorded primacy in matters of interpretation, it is well settled that the travaux preparatoires of an international convention may be used as "supplementary means of interpretation": compare art 31, *Vienna Convention the Law of Treaties*, *Vienna*, 23 May 1969. Following **Fothergill v. Monarch Airlines Ltd.** [1981] A.C. 251, I would be quite prepared, in an appropriate case involving truly feasible alternative interpretations of a convention, to allow the evidence contained in the travaux preparatoires to be determinative of the question of construction. But that is only possible where the court is satisfied that the travaux preparatoires clearly and indisputably point to a definite legal intention: see **Fothergill v. Monarch Airlines Ltd.**, *per* Lord Wilberforce, at 278C. Only a bull's eye counts. Nothing less will do. In the present case the shippers relied on the fact that on 11 October 1922 at the London Conference the chairman stated with reference to Article IV, r. 3 his view that "the words framed have been designed to give the shipper the largest protection that could be devised for him" and that the conference agreed. Neither this passage nor any other exchanges reflected in the travaux preparatoires throw any light on the question whether Article IV, r. 6 was intended as a free-standing provision. The statement that Article IV, r. 3 was designed to give the shipper "*the largest protection that could be devised for him*" was undoubtedly intended to give comfort to shippers but it is singularly uninformative even as to the scope of Article IV, r. 3. It was no more than a statement that under Article IV, r. 3 shippers get the largest protection that in a practical world could be afforded to them. In context the chairman's statement can be seen to be weasel words.

The resort to the travaux preparatoires provided nothing worthy of consideration in the process of the interpretation of Article IV, r. 3 and Article IV, r. 6.

58. Counsel to the shippers also relied on evidence given by Scrutton L.J. before the Joint Committee on the Carriage of Goods by Sea Act in June 1923 at the time when the United Kingdom had already decided that effect should be given to the Hague Rules: see 1923 V Parliamentary Papers, 27 June 1912, par 442, at p. 94. Scrutton L.J. offered the view that the committee should consider whether Article IV, r. 3 "*would in any way limit the shippers and others as to shipping dangerous goods.*" But, as Lord Roskill pointed out in an elegant piece in the Law Quarterly Review Scrutton L.J., notwithstanding a changing order in regard to world trade, was a passionate protagonist of the freedom of owners to dictate their terms: (1992) 108 L.Q.R. 501-505. Referring to the evidence of Scrutton L.J. and Frank MacKinnon Q.C. before the committee Lord Roskill observed, at p. 502:

"The criticism of Scrutton and MacKinnon was then concentrated upon their language. They gave dire and in the event wholly unwarranted warnings of the problems which would arise as to their construction with uncertainty and endless litigation replacing what they saw as the clarity of the existing law based upon freedom of contract. In truth, as every commercial lawyer knows, it is remarkable how few cases there have been in this country upon the construction of the Rules."

Scrutton L.J.'s observation was the outcome of an hostility to the very concept of a multilateral trade convention. His tentative observation on Article IV. r. 6 is of no value.

59. That leaves the overall position that the language of Article IV r. 6, read with Article IV, r. 3, tends to suggest that Article IV, r. 6 was intended to be a free-standing provision. I have already described the two pointers in that direction. As against that there is the fact that the United States courts have interpreted Article IV, r. 3 as qualifying Article IV, r. 6. Given the desirability of a uniform interpretation of the Hague Rules, the choice between the competing interpretations is finely balanced. But there is a contextual consideration which must also be weighed in the balance. It is permissible to take into account the legal position in the United Kingdom and in the United States regarding the shipment of dangerous cargo before the Hague Rules were approved. It is relevant as part of the contextual scene of the Hague Rules: ***Riverstone Meat Co. Pty. Ltd. v. Lancashire Shipping Co. Ltd.*** [1961] A.C. 807 *per* Viscount Simonds at p. 836. In *Brass v. Maitland* (1856) 6 E. & B. 470 the majority held that under a contract of carriage there is a term implied by law that a shipper will not ship dangerous goods without notice to the carrier; the obligation is absolute. The same view prevailed in the Court of Appeal in ***Bamfield v. Goole and Sheffield Transport Co. Ltd.*** [1910] 2 K.B. 94 and in ***Great Northern Railway Company v. L.E.P. Transport and Depository Ltd.*** [1922] 2 K.B. 742. This view was controversial. It was disputed in a strong minority judgment in ***Brass v. Maitland*** and in ***Bamfield v. Goole and Sheffield Transport Co. Ltd.;*** see also ***Mitchell Colts & Co. v. Steel Brothers & Co.*** [1916] 2 K.B. 610, *per* Atkin J at pp. 613-614; and Abbot on *Merchant Ships and Seamen,* 13th ed. (1892) at p. 522. Nevertheless, the law of England was as held by the majority in ***Brass v. Maitland.*** That view probably would have been regarded as authoritative in most countries in what was then the British Empire. In 1861 a court in the United States adopted the majority holding in *Brass v. Maitland* as a sound rule on the policy grounds viz that "*It throws the loss on the party who generally has the best means of informing himself of the character of the article shipped:*" ***Pierce v. Winsor*** 2 Sprague 35; see also Parsons, *A Treatise of the Law of Shipping*, (1869) Vol 1 at pp. 265-266. That remained the legal position in the United States until the conferences that led to the adoption of the Hague Rules. The United States was then already a great maritime power. Its shipping law was a matter of great importance. The British Empire was in decline but collectively the trading countries under its umbrella controlled a considerable proportion of ocean-going world trade. That means that at the time of the drafting of the Hague Rules the dominant theory in a very large part of the world was that shippers were under an absolute liability not to ship dangerous goods. This circumstance must have been known to those who drafted and approved the Hague Rules. No doubt they also knew that there was an the alternative theory namely that the shipper of dangerous goods ought only to be liable for want of due diligence in the shipment of dangerous goods. If this contextual scene is correctly described, and I have not understood it to be disputed, one is entitled to pose the practical question: What would the framers of the Hague Rules have done if collectively they had been minded to adopt the step of reversing the dominant theory of shippers liability for the shipment of dangerous goods? There is really only one realistic answer: they would have expressly provided that shippers are only liable in damages for the shipment of dangerous goods if they knew or ought to have known of the dangerousness of the goods. In that event the three parts of Article IV, r. 6 would have had to be recast to make clear that the shippers actual or constructive knowledge was irrelevant to the carriers right to land dangerous cargo but a condition precedent to the liability of the shippers for damages in the second part. Moreover, if this idea had been put forward for discussion the travaux preparatoires would no doubt have reflected the observations of carriers on such a fundamental change to their rights. The idea was never put forward. The inference must be that the framers of the Hague Rules proceeded on what was at that time an unsurprising assumption that shippers would be absolutely liable for the shipment of dangerous cargo.

60. In all these circumstances I am constrained to conclude that despite the decisions of the United States courts, the best interpretation of the language of Article IV, r. 6 read with Article IV, r. 3, seen against its contextual background, is that it created free-standing rights and obligations in respect of the shipment of dangerous cargo.

The remaining issues:

61. Given my conclusion in respect of Article IV, r. 6, it follows that the shippers are liable unless they are excused from liability under the Bill of Lading Act 1855. That is the only other issue which needs to be considered.

62. The shippers submit that if they were otherwise liable to the owners under the bill of lading in respect of the Khapra infested cargo, they were nevertheless divested of such liability by section 1 of the Bill of Lading Act 1855 when the property in the cargo passed to their immediate purchasers upon the endorsement of the bill of lading. The shippers must rely on the effect of section 1. That section does not expressly divest the shipper of his liabilities. Indeed, it contains no words which are capable of being construed as words extinguishing the liability of the shippers. On the contrary, there is a marked contrast between the provision that rights are transferred and vested and the provising merely making the endorsee subject to liabilities.

63. Putting to one side the plain language of section 1, counsel for the shippers was asked to explain why Parliament would have wanted to relieve the shippers of an accrued liability. Counsel said that such an interpretation would have the advantage of logical symmetry. That may be true. But in the real world it would be a strong thing for Parliament to do. It would involve taking away a carrier's right of action against a shipper who in many cases may be known and substituting for it a right of action against an unknown endorsee who may be insolvent or unreachable by effective legal process. Such a drastic legislative inroad upon the rights of carriers would require a rather specific form of words.

64. It is true that the argument of the shippers is supported by certain dicta: see *Smurthwaite v. Williams* (1862) 11 C.B.N.S. 842 and *Ministry of Food v. Lampart & Holt Line Ltd* [1952] 2 Lloyd's Rep. 371, at 382. The issue was not squarely addressed in those cases and the *dicta* relied on can no longer be supported. The interpretation put forward by the shippers is ruled out by the obvious meaning of the plain words of section 1.

Conclusion

65. For these reasons, which are substantially the same as the reasons contained in the speech of my noble and learned friend Lord Lloyd of Berwick, except in respect of the United States cases, I would dismiss the appeal.

LORD COOKE OF THORNDON , My Lords,

66. Having had the advantage of reading in draft the speeches of my noble and learned friends, Lord Lloyd of Berwick and Lord Steyn, I fully agree with their essential reasoning and wish only to add some brief observations.

67. On a straightforward reading of both the Hague Rules and the Bills of Lading Act 1855, I should have thought it plain, virtually beyond argument, that by Article IV, r. 6 of the Rules, in the absence of informed consent on behalf of the carrier to the dangerous shipment, the shipper was liable for all damages and expenses directly or indirectly arising out of or resulting from the shipment of dangerous goods; and equally plain that section 1 of the Act contains nothing to relieve the shipper of that liability. It is perhaps a tribute to the skill and learning of counsel versed in this branch of the law that the case occupied nearly four days of argument before your Lordships' Appellate Committee. It is to be noted, however, that the suggestion that Article IV, r. 3 might arguably reduce the shipper's liability under Article IV, r. 6 to one for negligence only was first put forward in the reply of counsel for the appellant shippers in the Court of Appeal following an intervention from the bench. Evidently it had previously not been thought worth raising.

68. Before your Lordships' Committee counsel for the respondent shipowners introduced the expression "free-standing" to describe the rights and obligations under Article IV, r. 6. It does not seem to me that this is a happy description. Like every other legal document, the Rules have to be read as a whole and Article IV, r. 6 is an integral part of them. In truth there is no difficulty in reconciling with it Article IV, r. 3 if in the latter the word "act" is treated as including an act of shipping dangerous goods without consent under r. 6. I can see no sound reason against that natural interpretation and would accordingly adopt it. It is not necessary to decide whether the word extends to all acts of shipment, even of non- dangerous goods, and if so whether in the case of non-dangerous goods some element of culpability is envisaged.

69. If, however, there were any prima facie conflict between the general provisions of Article IV, r. 3 and the special provisions of Article IV, r. 6, it would seem to be almost a classic case for applying the maxim generalia specialibus non derogant. This would not be to treat Article IV, r. 6 as free-standing: quite the reverse. It would be to conclude that on a fair reading of the Rules as a whole Article IV, r. 6 must take priority over Article IV, r. 3. Further reasons supporting that conclusion as representing the likely intention of the drafters have been given by my noble and learned friends, and it would be superfluous to repeat them. I would add only that the generalia specialibus maxim, as its traditional expression in Latin indeed suggests, is not a technical rule peculiar to English statutory interpretation. Rather it represents simple common sense and ordinary usage. It falls within the category explained as follows in Francis Bennion's *Statutory Interpretation* 2nd ed. (1992) at p. 805:

"A linguistic canon of construction reflects the nature or use of language generally. It does not depend on the legislative character of the enactment in question, nor indeed on its quality as a legal pronouncement. It applies in much the same way to all forms of language . . . Linguistic canons of construction are not confined to statutes, or even to the field of law. They are based on the rules of logic, grammar, syntax and punctuation; and the use of language as a medium of communication generally."

70. The United States cases cited in argument do not appear to me to be of material help, as they contain no discussion of the point about the relationship of rules 3 and 6 arising in the present case.

71. For these reasons I, too, would dismiss this appeal.

LORD CLYDE , My Lords,

72. I have had the advantage of reading a draft of the speech of my noble and learned friend Lord Lloyd of Berwick. For the reasons he has given, I too would dismiss this appeal.