CA on appeal brom Commercial Court (Moore=Bick J) before Brooke LJ; Mance LJ; Mr Justice. 20th February 2004.

**Lord Justice Mance:**

1. This appeal relating to an arbitrators' award takes us back to two decisions of this Court in the 1970s: ***The Alma Shipping Corporation of Monrovia v Mantovani (The 'Dione')*** [1975] 1 Lloyd's Rep. 115 and ***Gulf Shipping Lines Ltd v Compania Naviera Alanje S.A. (The 'Aspa Maria'*** [1976] 2 Lloyd's Rep. 643. The inter-change between arbitrators and the Commercial Court was then more frequent than it is today, and I note in passing that the prominent arbitrators in this case (Mr Baker-Harber, Mr Sheppard and Mr Coghlin) expressed regret that they "no longer [had] available to them the fast and convenient consultative case procedure that Lord Denning MR commended" in ***The Aspa Maria***.

2. The appeal is from Moore-Bick J, who on 9th July 2003 determined appeals on two preliminary questions of law which had been the subject of an interim final award made by the arbitrators on 21st November 2002. The questions arise under a charterparty made on 17th February 2000 on the Shelltime 3 form with amendments and additions between Kriti Akti Shipping Co. SA, owners of the tanker *Kriti Akti*, and Petroleo Brasiliero SA as charterers. The vessel's chartered service commenced on 25th May 2000.

3. The charter provides as follows:

   *"Period and Trading Limits*

   *3. Owners agree to let and Charterers agree to hire the vessel for a period of 11 (eleven) months, 15 days more or less in Charterers' option*

   *Final Voyage*

   *18 Notwithstanding the provisions of clause 3 hereof, should the vessel be upon a voyage at the expiry of the period of this charter, charterers shall have the use of the vessel at the same rate and conditions for such extended time as may be necessary for the completion of the round voyage on which she is engaged and her return to a port of redelivery as provided by this charter.*

   *CLS 50 – EXTENTION [sic]*

   *Any loss of time during which the vessel is off hire shall count as part of the charter period and may be used by charterers at their option as an extention of the aforesaid charter period."*

   *The words "11 (eleven) months, 15 days more or less in Charterers' option" in clause 3 and the whole of clause 50 were typewritten, rather than printed.*

4. During the charter the vessel was off hire on various occasions, the charterers say for 36 days, the owners say for only 17.6 days. For present purposes we are to assume that charterers' figure is correct. On owners' figure the preliminary issues are academic.

5. The 11 month period provided by clause 3 expired on 24th April 2001. On 13th March 2001 the charterers told the owners that they were exercising their option to extend the final date of the charter to 14th June. That was on the basis that they were entitled to add to the 11 month period the further 15 days provided for in clause 3 and 36 days off-hire under clause 50. While the vessel was discharging at Saó Sebastiaó on 29th May 2001, the charterers issued voyage instructions for a voyage to New York, revising or substituting them on 1st June 2001 in favour of a voyage from Saó Sebastiaó to Santos and then to New York. On each occasion the owners took the view that the charter period had already expired and would only perform the proposed voyage at an increased rate of hire. Charterers rejected this and owners therefore took back the vessel at Santos.

6. The proposed voyage could not have been completed until well after 14th June 2001. So the charterers' case depends upon clause 18, and upon the construction put upon the same clause in this Court in ***Chiswell Shipping Ltd and Liberian Jaguar Transports Inc v National Iranian Tanker Co (The 'World Symphony'*** *and 'World Renown'*) [1991] 2 Lloyd's Rep. 251. Clause 3 of the Shelltime 3 charter in that case was completed so as to provide for a charter period "*of six months fifteen days more or less in Charterers' option*". A voyage was ordered during the six months which could not have been completed until well after the expiry of the six month fifteen day maximum referred to in clause 3. This Court held nonetheless that the effect of "*the crucial words 'notwithstanding the provisions of clause 3 hereof' in clause 18"* was to enable the charterers to order a last voyage which would overrun the time otherwise stipulated for re-delivery under clause 3. In the "*colourful phrase*" used by Mr Gee QC and adopted by Lord Donaldson MR, a round trip charter could in this way be "*bolted on"* a charter for what would otherwise have been a fixed term. The Court was influenced by amongst other matters decisions to like effect by New York arbitrators. It is common ground that we are in this Court bound by this construction of the effect of clause 18 of what is a standard form. Indeed, the present arbitrators noted that "*the abnormality of that result is well understood",* and it appears that there has existed for some time (we were told by Mr Hancock QC since the 1990s) a Shelltime 4 form with an amended wording, which has been held to achieve a different effect by Mr Peter Gross QC (as he was) in ***The Ambor*** (2000) LMLN 549. In the present case for whatever reason the parties used the Shelltime 3 form, and, however the position might be elsewhere, we must follow the construction already put upon this form in this Court in *The World Symphony*.

7. Proceeding on that basis, the charterers' case depends upon treating both their (asserted) 36 day off-hire period and the 15 day hire period as relevant additions to the basic eleven month period, to arrive at a total period within which charterers may exercise a right to send the vessel under clause 18 on a final voyage likely to extend beyond the end of that total period.

8. The arbitrators decided two questions, which I can adapt to reflect the way the arguments developed, as follows: (i) whether the "*period of this charter*" in clause 18 includes any additional period for which charterers elect to extend the charter under clause 50 and (ii) whether, if so, the period of the charter as so extended also includes [for the purpose of clause 18] a further 15 days at charterers' option under clause 3. The arbitrators answered the first question in charterers' favour, but they concluded that ***The Aspa Maria*** bound them to answer the second in owners' favour. Moore-Bick J answered both questions in charterers' favour. Owners represented by Mr Berry QC now appeal with his permission. Put shortly, owners' first position is that "the expiry of the period of this charter" in clause 18 refers simply and solely to the expiry of the basic 11 month charter period identified in clause 3. Their alternative position is that, even if it refers to the basic period as extended in charterers' option by the off-hire days under clause 50, there cannot be, or alternatively clause 18 cannot refer to, any further 15 days margin period under clause 3.

9. The charterers, when claiming to extend the charter until 14th June 2001, took first the 15 day margin allowed by clause 3 and then the 36 days off-hire that they asserted had been incurred. However, the logic of clauses 3 and 50 dictates that the off-hire should be added first, and that, if and in so far as the 15 day margin has any effect in a charter containing clause 18, it should apply around the terminal date arrived at by adding the number of off-hire days to the basic period. That is also the way in which the questions decided by the arbitrators approach the matter. The essential reason is that the 15 day margin gives a margin either side of the re-delivery date. Clause 50 restores to the charterers, at their option and as part of the charter period, whatever number of days may be lost off-hire during the charter period. The re-delivery date is thus correspondingly postponed.

10. It is unnecessary to consider to what extent a clause 50 extension could be claimed to make good time lost not only during the running of the basic 11 month charter period (as extended by any off-hire), but also within the running of any 15 day period, if that runs cumulatively to a clause 50 extension – although there is attraction in the view that off-hire during the period of 15 days more after the basic 11 month period should extend the 15 day margin period. The arbitrators observed that the scope for dispute about whether and when a vessel is off-hire may create difficulties in operating clause 50. But they pointed out that that is also the case, independently of whether "the period of this charter" in clause 18 includes a period for which the charter is extended under clause 50. Both the arbitrators and the judge had no real difficulty in concluding that any period which charterers elect to take as an extension of the basic period under clause 50 counts as part of "the period of this charter" for all relevant purposes, including specifically those of clause 18. In my view, they were clearly right.

11. It follows that any extension period under clause 50 is added first. Further, apart from clause 18, the new terminal date arrived at by adding off-hire days to the basic 11 month period must carry with it the 15 day margin. It cannot have been intended that once charterers opted to extend the basic charter period by taking account of off hire days under clause 50, they became bound (subject to clause 18) to redeliver on the exact final terminal date resulting from such addition. Equally, I reject Mr Berry's submission that their only margin would in such a situation be whatever margin might be implied by law apart from the reference to "15 days more or less in charterers' option" in clause 3.

12. Mr Berry submits however, first, that clause 18 in the present charter in effect supersedes the provision in clause 3 for "*15 days more …. in charterers' option*", and, in any event, that the period of *"15 days more …. in charterers' option"* is not a period within which charterers are entitled to commence a new voyage, and certainly not a new voyage in respect of which charterers could invoke clause 18. These submissions raise important points of principle regarding the nature of the 15 day margin granted to charterers in their option by clause 3. The fact that the 15 day margin applies in the present case at the end of a basic period extended by off-hire days under clause 50 is incidental. The same points of principle would arise in a simpler context if there had been no off-hire days at all and charterers had claimed to order the vessel on a voyage of say 30 days commencing say 7 days after the end of the basic 11 month period. The case thus distinguishes itself from ***The World Symphony***. The clause 18 voyage there commenced during the basic period. Here it was ordered to commence during the margin period of 15 days more. No-one suggests that it is of any present relevance that charterers' first direction (on 29th May 2001) to perform such a voyage was, on charterers' case, itself given just prior to the expiry of the basic charter period as extended under clause 50.

13. In owners' submission, a 15 day margin in a time charter is a "t*olerance*", granted to cater for the exigencies of maritime life, such as unforeseen weather, accidents, congestion, etc. occurring during a last voyage commencing within the basic charter period of 11 months (or here 11 months plus off-hire days). Their primary submission is that, leaving clause 18 on one side, a charterer is expected during the basic charter period to order a voyage which will be likely to complete on the terminal date of the basic period. If due to maritime exigencies that legitimate expectation is falsified by delays, then the 15 days option prevents the charterers from being in breach for up to 15 days. If on the other hand the voyage is finished quicker than would have been expected, then, Mr Berry submits, the charterers can and should withhold redelivery and continue to pay hire up to the terminal date of the basic period. Mr Berry's alternative and (I say at once) to my mind more attractive submission is that the 15 days option is intended to provide a margin of which the charterers can take full advantage by ordering a last voyage commencing within the basic period of 11 months (or here 11 months plus off-hire days), but expected to complete at any time during the margin of 15 days more or less. It is a margin for redelivery conditioned upon orders for a legitimate last voyage being given within the basic period.

14. Mr Berry's submissions rest primarily on Lord Denning's well-known judgment in *The Dione*. In that case Lord Denning set out a series of propositions lettered (a) to (e) which he derived from the previous case-law. In (d) Lord Denning stated that, under a charter without the equivalent of clause 18, if a legitimate last voyage (that is a voyage reasonably expected to complete by the charter's final terminal date) unexpectedly overran that terminal date the charterer remained liable only for hire at the charter rate and no more until redelivery. In ***Hyundai Merchant Marine Co. Ltd v Gesuri Chartering Co. Ltd (The 'Peonia')*** [1991] 1 Lloyd's Rep. 100, the Court of Appeal disagreed with that statement, and pointed out its apparent inconsistency with other statements in Lord Denning's earlier propositions. That disagreement is not of direct relevance here. But it illustrates why Lord Denning's propositions cannot be approached like a statute.

15. In ***The Dione*** Lord Denning's proposition (a) was that, in relation to a charterparty for a stated period such as "three months" or "six months", without any express margin or allowance:

*"… the court will imply a reasonable margin or allowance. The reason is because it is not possible for anyone to calculate exactly the day on which the last voyage will end. It is legitimate for the charterer to send her on a last voyage which may exceed the stated period by a few days. …."*

***The Peonia*** establishes that, if a legitimate last voyage nevertheless proves in the event to exceed the implied margin, the charterer will be bound to pay any increase in the market rate above the charter rate during the period of the excess.

16. Proposition (b) was that:

*"…. it is open to the parties to provide in the charterparty – by express words or by implication – that there is to be no margin or allowance. In such a case the charterer must ensure that the vessel is redelivered within the stated period. If he does not do so – and the market rate has gone up – he will be bound to pay the extra. That is to say, he will be bound to pay the charter rate up to the end of the stated period, and the market rate thereafter …."*

Proposition (c) was that:

*"It is also, in my opinion, open to the parties themselves to fix expressly what the margin or allowance shall be. In that case the charterer must ensure that the vessel is redelivered within the permitted margin or allowance. If he does not do so – and the market rate has gone up – he will be bound to pay the extra. That is to say, he will be bound to pay the charter rate up to the end of the expressly permitted margin or allowance, and the market rate for any overlap thereafter …."*

17. Lord Denning then defined the charter period as meaning "the stated period plus or minus any permitted margin or allowance, express or implied"; and said in propositions (d) and (e):

*"(d) If the charterer sends the vessel on a legitimate last voyage – that is, a voyage which it is reasonably expected will be completed by the end of the charter period, the shipowner must obey the directions. ….*

*(e) If the charterer sends the vessel on an illegitimate last voyage – that is, a voyage which it cannot be expected to complete within the charter period, then the shipowner is entitled to refuse that direction and call for another direction for a legitimate last voyage. …."*

18. In ***The Peonia*** Bingham LJ said at p.107:

*"It would seem to me …. that every time charter must have a final terminal date, that is a date by which (in the absence of an exonerating clause) the charterer is contractually obliged to redeliver the vessel. Where the law implies a margin or tolerance beyond an expiry date stipulated in the charter-party, then final terminal date comes at the end of such implied extension. When the parties have agreed in the charter-party on the margin or tolerance to be allowed, the final terminal date comes at the end of such agreed date. But the nature of a time charter is that the charter is for a finite period of time and when the final terminal date arrives the charterer is contractually bound (in the absence of an exonerating clause) to redeliver the vessel to the owner. I shall hereafter use the expression "final terminal date" to mean the final contractual date for redelivery, after the expiry of any margin or tolerance which the parties may agree or the law imply.*

*The cases and books draw a distinction between two cases which have become known as "the illegitimate last voyage" and "the legitimate last voyage". In the former case the charterer gives orders for the employment of the vessel which cannot reasonably be expected to be performed by the final terminal date. He is therefore seeking to avail himself of the services of the vessel at a time when the owner had never agreed to render such services. It is accordingly an order which the charterer is not entitled to give (just as an order to visit a prohibited port would be) and in giving it the charterer commits a breach of contract (perhaps a repudiatory breach but that we need not decide). The owner need not comply with such an order, because he has never agreed to do so. Alternatively, he may comply with the order although not bound to do so: if he does comply, he is entitled to payment of hire at the charter-party rate until redelivery of the vessel and (provided he does not waive the charterer's breach) to damages (being the difference between the charter rate and the market rate if the market rate is higher than the charter rate) for the period between the final terminal date and redelivery. . . . . In the contrasting case of the legitimate last voyage the charterer gives orders for the employment of the vessel which can reasonably be expected to be performed by the final terminal date. These are orders which the charterer is entitled to give, and so legitimate."*

19. However, the finite nature of a time charter may be somewhat qualified. In ***The Peonia*** a provision that *"Charterers have further option to complete last voyage within …. trading limits*" was held to give the charterers a right to complete a legitimate last voyage free of any liability in damages in respect of the period between the final terminal date and a later redelivery date (unless the delay in completion was due to charterers' breach of some

other term); while in *The World Symphony* clause 18 was held sufficient to excuse charterers from any such liability even in the case of what would otherwise have been an illegitimate order.

20. In *The World Symphony*, the voyage ordered in early October 1988 could not be (and was not) completed consistently with the redelivery of the vessel by the terminal date of 24th December 1988 - a date calculated by adding the 15 days margin to the basic six month charter period. This Court held that clause 18 superseded any distinction between legitimate and illegitimate last voyages; and clause 18 therefore confers very considerable freedom as regards the redelivery date. A voyage may be ordered to commence during the basic period which will be and is completed long after a terminal date arrived at by adding the 15 days margin to the basic 11 month charter period; and the charterer will continue to be entitled to the use of the vessel at the charter hire rate, rather than any higher market rate, throughout the whole of such a voyage.

21. The statements of principle in ***The Dione***, ***The Peonia*** and *The World Symphony* all proceed on the basis that it is legitimate for a time charterer to give directions for the vessel's use on a voyage so long as it can reasonably be expected to be completed by the final terminal date, defined by taking into account any implied or express margin to which the charterer is entitled. Mr Berry's first proposition, that it is the duty of a charterer to give instructions for a voyage which can reasonably be expected to complete on or at latest by the end of the basic period, excluding from consideration any implied or express margin, lacks supporting authority and to my mind lacks any practicality. I do not read Lord Denning as having confined even the implied margin suggested in his proposition (a) to situations where maritime exigencies during the voyage meant that the vessel could not be redelivered until after the expiry basic charter period. The submission that an express margin in terms "15 days more or less in Charterers' option" should be so confined seems to me to run flatly contrary to the obvious significance of these words, which on their face give charterers valuable trading flexibility, when planning the vessel's use. Mr Berry's separate submission, that in the case of a voyage expected to end at, but in the event ending before, the end of the basic period the charterer could and should delay redelivery and continue to pay charter hire until the end of the basic period, would deprive the words "*15 days …. less*" of any value at all.

22. The 15 day margin therefore has value for the charterers when, and not merely after, giving directions for the vessel's use. The question is whether, apart from clause 18, it is legitimate for a charterer to give directions, *during* a margin period of "*days more in charterers' option*", for a voyage which can reasonably be expected to complete not later than the final terminal date constituted by the basic period plus the margin. It would be wrong to assume that all margins, implied and express, necessarily have the same effect. Nor can Lord Denning's propositions in ***The Dione*** mean that there is always a parallel between the implied margin arising under a charter for, say, "*three months*" or *"six months"* and an express margin arising under particular charter wording. The particular charter wording must be construed. Here the particular wording is "*11 (eleven) months, 15 days more or less in Charterers' option*" (as it was in ***The Dione***, although Lord Denning's propositions do not expressly address this wording). The natural meaning of this wording is in my view to entitle charterers to the full commercial use of the vessel for a period of between 11 months plus or minus 15 days. Apart from clause 18 and apart from authority, I would see no reason for restricting charterers' freedom to give voyage directions by reference to any date, except the final terminal date. Apart from clause 18, it would be incumbent on charterers (a) to ensure that any directions given were for a voyage which could be expected to complete not later than the final terminal date and (b) to ensure that the vessel did in any event complete the voyage by the final terminal date. That would give owners adequate protection, and there would be no reason to limit the power to give directions to voyages commencing prior to the end of the basic charter period. In practice it might be relatively uncommon for any voyage to commence and complete during a margin period of 15 days more. But it is possible to conceive of short voyages (e.g. a 12 day voyage commencing 1 day after the terminal date of the basic charter period – or even due to commence 1 day before that terminal date, but delayed in commencement until 1 day after it), as well as of longer option periods (cf the " *6 months time charter 20 days more or less*" agreed in ***The Dione*** or the *"6 months, 30 days more or less*" in ***The Aspa Maria***). Even if these are unlikely possibilities, that provides no basis for implying into the charter some restriction, related to the terminal date of the basic charter period, on the date when final voyage directions can be given or a final voyage can commence.

23. Next it is necessary to feed into the picture clause 18, as interpreted in ***The World Symphony***. Owners are thereby exposed to a final round voyage of no fixed length, which it is clear from the outset will extend very considerably beyond the final terminal date. But this is not a problem which derives from including any margin period of "days more in charterers' option" in the charter period during which clause 18 may be operated. Even if a charter incorporating clause 18 were expressly to exclude any margin at all, clause 18, as interpreted in *The World Symphony*, would still expose owners to a last voyage of uncertain length which, both when directed and as performed, could extend well after the charter's terminal date. So I do not think that the solution to what the arbitrators described as the abnormality of clause 18 lies in giving to the words of clause 3 what I would regard as an abnormal meaning. I note in parenthesis that, although clause 18 permits a voyage for a trip the end date of which may often be uncertain, Mr Hancock submits that a last voyage of an extreme length would be precluded, even under the interpretation adopted in ***The World Symphony***, by reference to the principle in ***Margetson & Co. v. Glynn*** [1893] AC 351 - cf per Hobhouse J at first instance in ***The World Symphony*** [1991] 2 Ll.R. 251, 259. It is unnecessary for me to address that submission. Whether there is or is not any such limitation on the operation of clause 18, the words of clause 3 are in my view, on their face, clear: the charterers have the vessel for all practical purposes for any period they wish between 11 months plus and 11 months minus 15 days.

If this is right, then a voyage within clause 18 may be commenced at any time during that period, up to its final terminal date of 11 months plus 15 days (or, here, 11 months plus off-hire days plus 15 days).

24. Mr Berry's contrary submission also has the effect (as he accepted) that, in the type-written phrase "15 days more or less", the words "more or" become meaningless; they can on his case only cater for a vessel on a voyage as at the expiry of the basic charter period, in which case clause 18 would anyway cater for the situation. This is however a subsidiary consideration which arises from the width of the interpretation put on clause 18 in ***The World Symphony***. If clause 18 had been interpreted as having the same effect as the clause in ***The Peonia***, then the "15 days more" margin would have been relevant in determining what voyages were legitimate for the purposes of clause 18. In my view, quite apart from the consideration that Mr Berry's submission renders the words "more or" meaningless in the light of ***The World Symphony***, the natural construction of the option in clause 3 is to introduce a degree of flexibility into the period during which charterers are to have the full use of the vessel and the full benefit of their contractual rights; and there is no reason to restrict the use which charterers may make of the vessel, or of their rights to give directions, for a voyage commencing during that period.

25. I come therefore to ***The Aspa Maria***, which in Mr Berry's submission shows that this is wrong, and that we are bound to a different conclusion. It is, in Mr Berry's submission, a binding decision as to the significance of the margin period and so as to the meaning of "the period of this charter" for the purposes of clause 18. In ***The Aspa Maria*** the vessel was chartered for a period described in lines 13 and 14 of the charter as

*"6 months, 30 days more or less at charterers' option".*

Clause 13 provided that

*"the charterers shall have the option of continuing this charter for a further period of six months, 30 days more or less at charterers' option, declarable at the end of the fourth month."*

26. Two months after the commencement of the charter service, the charterers exercised their option to continue the charter for a further period of six months. After just over 13 months of charter service, owners withdrew the vessel (presumably, although the reports do not record this, at the end of a voyage). The question for the court was whether "the maximum duration of the charter is 12 months plus 60 days or 12 months plus 30 days". The Court held, not surprisingly if I may say so, that the maximum duration was 12 months 30 days. As Orr LJ said:

*"it can hardly have been the intention of the parties that the charterers in the circumstances of this case should have the benefit of two tolerance periods in respect of only one delivery."*

In the same vein, Lord Denning said:

*"Any other view would mean that the charterers could have redelivered the vessel at any time between 10 months and 14 months. That would not make business sense, at any rate, to my mind."*

27. The leading judgment, with which both Orr LJ and Waller J agreed, was Lord Denning's and I quote it at greater length:

*"The point depends on the effect of the words which stated the original period to be "6 months 30 days more or less". Mr. Pickering says that that gave the charterers a time charter for any period from five to seven months at charterers' option. I cannot agree. I think it only gives the charterers six months with a margin of tolerance of 30 days either way. If the "30 days more or less" were not mentioned, the law would imply a reasonable margin of tolerance before or after the six months. The reason being because the time charterer of a ship cannot be sure exactly at what date he can get the ship redelivered. He must have some tolerance before the end of the six months or a few days afterwards. But the parties can expressly stipulate what the margin of tolerance is. That is made clear in the recent case of* ***The Dione*** *[1975] 1 Lloyd's Rep. at 115. They can and do expressly stipulate what that margin is to be. In that case the words were "six months time charter 20 days more or less". It was held that the 20 days was an express agreement as to the exact extent of the tolerance. So here the 30 days is not an extension of the charter. It is simply an express agreement as to the tolerance permitted. If that is the right interpretation of the original period, then, when one comes to the option clause, when it speaks of "a further period of a further 6 months", it means a further period following on the first six months - not following on five months or seven months. So at the end of the first six months there is to be a further period of a further six months "30 days more or less". So it means that the time charter lasts for six months plus six months - that is, 12 months in all-30 days more or less. It means that it goes for the full period of 12 months "30 days more or less". In my opinion, therefore, the owners were right in saying that after the 12 months expired there were only 30 days left. These expired by July 28, 1974. The vessel ought to have been redelivered then. She was not redelivered then, and they were entitled to withdraw the vessel, as they did, on Aug. 6, 1974. The Judge so decided and I agree with him. Any other view would mean that the charterers could have redelivered the vessel at any time between 10 months and 14 months. That would not make business sense, at any rate, to my mind.*

*There is another point I would mention. It seems to me that the phrase "30 days more or less at charterers' option" was not a true option. It did not have to be exercised by express notice or declaration such as Lord Devlin said would be necessary for a true option: see the* ***Reardon Smith*** *case, [1963] 1 Lloyd's Rep. 12; [1963] A.C. 691. The charterer could properly redeliver the vessel within the 30 days more or less so long as he gave the proper notice of redelivery, which would be 30 days in this case. It would not be necessary for him to do anything more by way of exercising an option."*

28. In Mr Berry's submission we are bound by the first part of this reasoning to conclude that any margin, such as the "30 days more or less in charterers' option" in ***The Aspa Maria*** or the "15 days more or less in charterers' option"

in this case, constitutes no more than "an express agreement as to the exact extent of the tolerance" and "is not an extension of the charter"; and that this is especially so when applying an extension clause like that in *The Aspa Maria* or (as he submits) like clause 18 which requires "the period of this charter" to be ascertained in order to see whether a vessel was upon a voyage at its expiry.

29. I start by saying that I find it impossible to gain from the brief reasoning of the first part of Lord Denning's judgment any support for Mr Berry's primary submission (cf paragraph 13 above) that a time charterer must in ordering a last voyage aim at a completion date which coincides with the last day of the basic charter period ignoring any margin, and that the margin is thus simply for maritime exigencies materialising during such a last voyage. But Mr Berry submits that ***The Aspa Maria*** is on any view authority showing that the margin cannot be regarded as involving a simple extension or variation of the basic charter period; and that it follows that, although orders may during the basic charter period be given for a voyage expected to begin during the basic charter period but to complete during the margin period of 15 days more, orders may not be given for a voyage expected to commence during the margin period of 15 days more, even if it is also expected to complete during that margin period. In my view, this is also to read into Lord Denning's words more than they will bear. He was concerned with the rationale of the margin period, and the essence of the point that he was making was that it was a tolerance in respect of *redelivery* – in respect of the "date he [the charterer] can get the ship redelivered". The operation of the extension clause after two months meant that the redelivery date was postponed for at least six months, at which point alone a tolerance of 30 days either way for redelivery could apply.

30. I add that clause 18 is not similar to the extension clause in ***The Aspa Maria***. The extension clause in ***The Aspa Maria*** was a period clause of the same character as the basic period clause; and its effect, when operated, was to extend the time charter period and give a new final terminal date for redelivery. Clause 18 takes as its starting point the time charter period. It applies whenever the vessel is on a voyage at the expiry of that period, and its effect then is to give the charterers the further use of the vessel on a hybrid basis (for a round voyage charter at a time charter rate ending whenever the vessel's round voyage happens to end). Any contractual clause must be construed in context, and great caution is necessary about treating as binding precedent brief statements made in the context of significantly different contractual clauses.

31. I do not therefore consider that ***The Aspa Maria*** binds us to reach any different conclusion to that which I consider correct on the ordinary language and proper construction of the present charter. I consider that Moore-Bick J was correct not merely to dismiss owners' appeal from the arbitrators on the first question, but also to allow charterers' appeal from arbitrators on the second question and to answer both the questions in the affirmative. But for their conclusion that they were bound by ***The Aspa Maria*** the arbitrators said that they "*would have had little difficulty"* in agreeing with charterers' "straightforward" reading of clause 3, and it was "somewhat reluctantly" that they concluded that they were bound by the reasoning in Lord Denning's judgment in ***The Aspa Maria*** to conclude that the 15 days more or less in charterers' option provided by clause 3 were irrelevant for the purposes of applying clause 18. The conclusion reached by the judge and which I reach on the second question corresponds with that which the arbitrators would have liked to reach. I would dismiss this appeal against Moore-Bick J's judgment and order dated 9th July 2003 accordingly.

**Park J:**

32. I agree.

**Brooke LJ:**

33. I also agree.

Mr Steven Berry QC (instructed by Messrs Holman Fenwick Willan) for the Appellant
Mr Christopher Hancock QC & Mr Lawrence Akka (instructed by Messrs Ince & Co.) for the Respondent