[HIGH COURT OF AUSTRALIA.]

BURNS PHILP AND COMPANY LIMITED
PLAINTIFF, } APPELLANT;

AND

NELSON AND ROBERTSON PROPRIETARY LIMITED . . . . . .
DEFENDANT, } RESPONDENT.

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SYDNEY, 1957, *Nov.* 20, 21; Taylor J.

1958, MELBOURNE, *Mar.* 11.

Dixon C.J., McTiernan, Williams, Webb and Kitto JJ.

Shipping—Salvage—Limitation of Actions—Services rendered by another belonging to the same owner—Commencement of action—Two years from date of services rendered—Navigation Act 1912-1953 (*Cth.*), *ss.* 317, 396 (1).

The *Navigation Act* 1912-1953 (Cth,), by s. 396 (1) provides: "No action shall be maintainable to enforce any claim or lien against a vessel or her owners in respect of any damage or loss to another vessel, her cargo or freight, or any property on board her . . . caused by the fault of the former vessel, whether such vessel be wholly or partly in fault, or in respect of any salvage services, unless proceedings therein are commenced within two years from the date when the damage or loss or injury was caused or the salvage services were rendered."

Held, by *Dixon* C.J., *McTiernan*, *Williams* and *Kitto* JJ. (*Webb* J. dissenting), that the limitation of two years imposed by the section applies generally to all actions to recover in respect of salvage services and is not confined only to such actions as are brought against a vessel or her owners.

Decision of *Taylor* J., affirmed.

APPEAL from *Taylor* J.

In a suit brought by Burns Philp & Co. Ltd. in the original jurisdiction of the High Court as a Colonial Court of Admiralty by way of writ of summons issued on 21st February 1956, against Nelson & Robertson Pty. Ltd. the statement of claim was substantially as follows:—

1. The plaintiff is the owner of the motorship *Bulolo* and the motorship *Malaita*, which vessels together rendered salvage services to the steamship *Mangola* and her cargo on and between 9th February 1953 and 15th February 1953 inclusive, off Kar Kar Island, in the circumstances hereinafter appearing.

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2. The *Bulolo* is a twin screw motorship belonging to the Port of Sydney of 6,397 tons gross, 399 feet in length, 58 feet in beam, and fitted with internal combustion engines of 643.5 horse power nominal, working up to 4,900 brake horse power effective. At the time of the said services the *Bulolo* had put to sea from Madang for the purpose of assisting the *Mangola*. At the time of the said services the *Bulolo* had 516 tons of cargo on board and was manned by a crew of fourteen officers and ninety-four hands all told. The value of the *Bulolo* at the time of those services was £937,500 Australian currency.

3. The *Malaita* is a single screw motorship belonging to the Port of Sydney of 3,310 tons gross, 315 feet in length, 47 feet in beam and fitted with internal combustion engines of 308 horse power nominal, working up to 1,740 brake horse power effective. At the time of the said services the *Malaita* had been diverted from a voyage for the purpose of assisting the *Mangola*. At the time of the said services the *Malaita* had 660 tons of cargo on board and was manned by a crew of eleven officers and forty-nine hands all told. The value of the *Malaita* at the time of those services was £312,500 Australian currency.

4. The *Mangola* is a single screw steamship belonging to the Port of Singapore of 3,352 tons gross, 331 feet in length, 48 feet in beam and fitted with steam engines of 231 horse power nominal. Prior to the said services the *Mangola* was laden with a cargo of copra and general cargo and manned by a crew of nine officers and fifty-eight hands all told.

5. The defendant was at the time of the services the owner of certain of the cargo carried in the *Mangola*, the value of the defendant's said cargo at the time of the services being £1,282; the total value of the cargo carried in the *Mangola* at that time was £191,151 of which cargo to the value of £155,085 was saved by the services.

6. At 12.49 a.m. on 8th February 1953 the *Mangola*, whilst on a voyage from Lombrum to Madang grounded in about two fathoms of water on a coral reef off the east coast of Kar Kar Island.

7. On the evening of 8th February 1953 the *Bulolo* was lying in Madang. She was requested to proceed to Kar Kar Island to render assistance to the *Mangola*. *Bulolo* reached the *Mangola* at 6.05 a.m. on 9th February 1953. Thereafter until 5.14 p.m. on 13th February 1953 a number of attempts were made by the *Bulolo* to tow the *Mangola* off the coral reef. On 9th and 10th February the weather was dull and cloudy with occasional rain which rendered more difficult the attempts at salvage. The whole situation in which these attempts were made was entirely governed

by the north winds prevailing at the time and the sudden shifts of strong currents at the scene of the grounding; at one stage conditions would appear comparatively favourable but thereafter the conditions might suddenly change and become dangerous by reason of rain squalls, increased or changing wind or shifts of the current. The whole of the operations were carried out in changing weather conditions on a lee shore in uncharted water and in close proximity to dangerous reefs rising sharply from water in which it was extremely difficult to find bottom for the purposes of anchoring. Following upon the arrival of the *Malaita* as hereinafter alleged the *Bulolo* left the scene of the grounding at 5.14 p.m. on 13th February and proceeded to the Port of Rabaul. The difficult and dangerous conditions at the scene rendered it impracticable for two vessels of the size of the *Bulolo* and the *Malaita* to be simultaneously engaged on salvage operations. In addition to the frequent attempts at towing the *Bulolo* and her boats and equipment were used extensively and in varying conditions of difficulty and danger for the purpose of lightening the *Mangola*.

8. Stores were expended by the *Bulolo* in rendering the aforesaid assistance to the *Mangola*.

Expense for overtime was incurred by reason of the services rendered by the *Bulolo* to the *Mangola* and was paid to master, deck officers, engineers, pursers, radio operator, boatswain, shipwright and able-seamen and all other hands.

Damage was sustained by the *Bulolo* in the course of rendering the aforesaid services to the *Mangola*. In addition to the foregoing matters the plaintiff lost the use of the *Bulolo* from the time that she left Madang, on 8th February 1953, until her return to Rabaul on 13th February 1953, and incurred the ordinary running expenses of the *Bulolo* between those times.

9. At noon on 10th February 1953 the *Malaita* was en route from Rabaul to Samarai when she was requested to proceed to Kar Kar Island to render assistance to the *Mangola*. *Malaita* reached the *Mangola* at 11 p.m. on 11th February 1953. Thereafter until 9.15 a.m. on 15th February 1953 a number of attempts were made by the *Malaita* to tow the *Mangola* off the coral reef. The conditions under which these attempts were made were as alleged in par. 7 of this statement of claim. In addition to the frequent attempts at towing, the *Malaita* and her boats and equipment were used extensively and in varying conditions of difficulty and danger for the purpose of lightening the *Mangola*. On the morning of 15th February 1953 at about 7.00 a.m. the *Malaita*, having found bottom with her anchor secured a heavy mooring line from

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her stern to the bow of the *Mangola* and hove the line taut and continued to heave with her after winch. Prospects seemed favourable and at about 8.45 a.m. the manilla line was taken to a second winch on *Malaita's* afterdeck and the pull thereby doubled. *Malaita* continued thereafter to heave with both winches, the combined force of the heaving being approximately ten tons which was equivalent to the power which *Malaita's* main engines would have delivered at full speed. Eventually at about 9.15 a.m., whilst still so heaving and whilst preparations were being made to shackle up the cable for towing, the *Mangola* was freed from the reef and nosed right up to the stern of the *Malaita* which had been only one hundred and fifty feet from *Mangola's* bow. The *Mangola* was at that stage not under control, having no power, and for some hours thereafter difficult and dangerous manoeuvring in hazardous and rapidly changing circumstances was necessary in order to preserve both the *Mangola* and the *Malaita* from damage. At 2.45 p.m. on 15th February, the *Mangola* gathered way under her own power and was escorted by the *Malaita* to Madang which port was reached at 7.30 p.m. on 15th February. Further assistance was rendered by the *Malaita* to the *Mangola* whilst in the Port of Madang on 16th February and the *Malaita* sailed at 6 a.m. on 17th February for Samarai. By noon on 18th February the *Malaita* was in an equivalent position to that which she had been in at noon on 10th February when diverted to the assistance of the *Mangola*.

10. Stores were expended by the *Malaita* in rendering the aforesaid assistance to the *Mangola*.

Expense for overtime was incurred by reason of the services rendered by the *Malaita* to the *Mangola* and was paid to master, deck officers, engineers, pursers, radio operator, boatswain, shipwright and able-seamen and other hands.

Damage was sustained by the *Malaita* in the course of rendering the aforesaid services to the *Mangola*.

In addition to the foregoing matters the plaintiff lost the use of the *Malaita* from the time that she was diverted from her journey, namely noon on 10th February 1953, until her return to an equivalent position, namely noon on 18th February 1953, and incurred the ordinary running expenses of the *Malaita* between the said times.

11. By reason of the aforesaid services the *Mangola* and her cargo were rescued from a position of considerable danger and were placed in safety. Having stranded on the coral reef the *Mangola* was in a helpless condition and, but for the services of the *Bulolo*

and the *Malaita*, the *Mangola* and her cargo might and probably would have suffered more serious damage even to the point of total destruction. In rendering the said services the *Bulolo* and the *Malaita* were exposed to considerable danger and in addition the services rendered involved a lengthy period of time.

12. This matter is in the aforesaid premises one which lies within the original jurisdiction of the High Court.

The plaintiff claimed: (1) such an amount of salvage as the Court thought fit to award; (2) the condemnation of the defendant in the salvage and in costs; and (3) such further and other relief as the case required.

In its statement of defence, delivered on 20th July 1956, the defendant said pars. 1 to 7 inclusive did not relate to the matters of law raised by the demurrer, and continued as follows:

8. The defendant said that the services in respect of which a salvage award was claimed in the suit were rendered between 9th and 15th February 1953, and that the writ of summons was issued on 21st February 1956, more than two years after the alleged salvage services were rendered. The defendant therefore said that the action was not maintainable and it would rely on s. 396 of the *Navigation Act* 1912-1953 (Cth.), or, in the alternative, upon s. 8 of the Imperial Act 1 & 2 Geo. V c. 57, the *Maritime Conventions Act* 1911.

9. The defendant said that the reef on which the *Mangola* grounded was a reef extending out from the centre of the east coast of Kar Kar Island.

10. Kar Kar Island was within the Territory of New Guinea. The stranding took place and the alleged salvage services were rendered within the territorial waters of a Territory under the authority of the Commonwealth, viz. New Guinea.

11. The *Mangola*, *Bulolo* and *Malaita* at all material times were Australian-trade ships within the definition thereof in the *Navigation Act* 1912-1953.

12. The defendant said that in the circumstances set out in pars. 10 and 11 hereof no action lay against the defendant as owner of cargo carried in the *Mangola* for payment by it of salvage and would rely upon s. 317 of the *Navigation Act* 1912-1953 as a defence in the suit.

By its reply and demurrer dated and delivered 30th August 1956, the plaintiff said 1. does not relate to the matters of law raised by the demurrer:

2. The plaintiff demurred to par. 8 of the defence on the ground that the plaintiff's claim in this action does not come within the

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operation of s. 396 of the *Navigation Act* 1912-1953 (Cth.), nor does it come within the operation of s. 8 of the Imperial Act 1 & 2 Geo. V c. 57, the *Maritime Conventions Act* 1911 :

3. The plaintiff demurred to pars. 10, 11 and 12 of the defence on the ground that s. 317 of the *Navigation Act* 1912-1953 does not provide the defendant with a defence to the plaintiff's claim in the action.

The demurrer came on for trial before *Taylor* J.

The relevant statutory provisions are sufficiently set forth in his Honour's reasons for judgment hereunder.

L. W. Street, for the plaintiff.

Sir *Garfield Barwick* Q.C. and *B. Burdekin*, for the defendant.

Cur. adv. vult.

Mar. 29, 1957.

TAYLOR J. delivered the following written judgment :—

The questions which present themselves for consideration in this matter arise upon demurrers by the plaintiff to a series of allegations contained in a defence in an action to recover salvage. The circumstances of the case, as disclosed by the pleadings, are unusual inasmuch as the plaintiff was the owner, both, of the salved vessel, the *S.S. Mangola*, and of the two vessels which are alleged to have performed the salvage operations and the action is brought to recover salvage from the owner of a consignment of cargo on the *Mangola*.

It is unnecessary for present purposes to recount the allegations made in the statement of claim beyond observing that the incident which immediately preceded the operations relied upon to found the plaintiff's claim was the stranding of the *Mangola* on a coral reef on or near the coast of Kar Kar Island and that those operations were performed more than two years before action brought.

By the defence it is alleged that Kar Kar Island is part of the Territory of New Guinea and that the alleged salvage services were rendered within that Territory, a Territory under the control of the Commonwealth. Further it is alleged that the salvor ships were Australian-trade ships within the meaning of the *Navigation Act* 1912-1953 (Cth.) and that, in the circumstances no action lies against the defendant for payment of salvage. As appears from the statement of defence the defendant relies upon s. 317 of the *Navigation Act* to avoid the plaintiff's claim. To the paragraphs which contain these allegations the plaintiff had demurred and a further defence based upon s. 396 of the *Navigation Act* met a like fate.

The terms of the relevant sections of the *Navigation Act* are of some importance and it is desirable to set them out in full: "s. 317. Where any ship is wrecked stranded or in distress at any place on or near the coasts of Australia or any tidal water within Australia, and services are rendered by any person in assisting that ship or saving any wreck, there shall be payable to the salvor, by the owner of the ship or wreck, a reasonable amount of salvage, to be determined in case of dispute in manner hereinafter mentioned . . . s. 396 (1). No action shall be maintainable to enforce any claim or lien against a vessel or her owners in respect of any damage or loss to another vessel, her cargo or freight, or any property on board her, or damage for loss of life or personal injuries suffered by any person on board her, caused by the fault of the former vessel, whether such vessel be wholly or partly in fault, or in respect of any salvage services, unless proceedings therein are commenced within two years from the date when the damage or loss or injury was caused or the salvage services were rendered. (2) No action shall be maintainable under this Act to enforce any contribution in respect of an over-paid proportion of any damages for loss of life or personal injuries unless proceedings therein are commenced within one year from the date of payment. (3) Any Court having jurisdiction to deal with an action to which this section relates may, in accordance with the rules of court extend any period mentioned in this section to such an extent and on such conditions as it thinks fit, and shall, if satisfied that there has not during such period been any reasonable opportunity of arresting the defendant vessel within the jurisdiction of the Court, or within the territorial waters of the country to which the plaintiff's vessel belongs or in which the plaintiff resides or has his principal place of business, extend any such period to an extent sufficient to give such reasonable opportunity. (4) For the purposes of this section, the expression 'freight' includes passage money and hire, and reference to damage or loss caused by the fault of a vessel shall be construed as including references to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages."

The argument of the defendant in support of the first of the matters referred to is that s. 317 provides an exclusive code with respect to salvage rights where salvage operations have been performed "at any place on or near the coast of Australia" and it is said that this expression is appropriate to comprehend the coasts of Territories under the authority of the Commonwealth wherever they may be situated.

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"Australia" is defined by the *Acts Interpretation Act* 1901-1950 as including the whole of the Commonwealth and, it is contended, the latter term embraces Territories under the authority of the Commonwealth.

This defence, it will be noticed, depends for its validity not only upon the correctness of this submission but also upon the contention that s. 317—which, unlike its counterpart in the *Merchant Shipping Act* 1894 (Imp.) (s. 546), makes no mention of the salvage of cargo—constitutes a code exclusively defining the circumstances in which salvage will become payable when salvage operations have taken place on or near the coasts of Australia.

The purpose of s. 546 (and s. 565) of the *Merchant Shipping Act* and earlier relevant legislation, was not, however, to define the *circumstances* in which a reward should become payable in respect of salvage operations performed "on or near the coasts of the United Kingdom", but to extend the jurisdiction of the Admiralty Court to award salvage for services rendered otherwise than on the high seas.

Broadly speaking, s. 6 of 3 & 4 Vict. c. 65 (1840) extended the jurisdiction of the Court of Admiralty in salvage cases to the body of a county, but only in the case of a "ship or sea-going vessel" whilst the Act of 1846 (9 & 10 Vict. c. 99) extended the jurisdiction to all kinds of property whether on the high seas or within the body of a county.

The immediate predecessor of s. 546 of the *Merchant Shipping Act* 1894 was s. 458 of the *Merchant Shipping Act* of 1854 (Imp.) which provided that whenever any ship or boat was stranded or otherwise in distress *on the shore of any sea or tidal water situate within the limits of the United Kingdom*, and services were rendered by any person in assisting such ship or boat, or in saving the lives of the persons belonging to such ship or boat, or in saving the cargo or apparel of such ship or boat or any portion thereof, there should be payable by the owners of such ship or boat, cargo, or apparel to the person by whom such services or any of them should be rendered, a reasonable amount of salvage. Section 546 of the Act of 1894 is, otherwise, in substantially similar terms but it relates to vessels "wrecked, stranded or in distress *at any place on or near the coasts of the United Kingdom*".

The italicised words in s. 458 of the Act of 1854 had been the subject of judicial consideration prior to the passing of the later Act and in *The Leda* (1) and *The Mac* (2) it was held that the section was not confined to those cases where vessels were actually touching

(1) (1856) Swab. 40 [166 E.R. 1007]. (2) (1882) 7 P.D. 126.

the shore itself and the suggestion has been made that the wider limits prescribed by the Act of 1894 were introduced to conform with the decisions previously given (*Temperley's Merchant Shipping Acts*, 5th ed. (1954), p. 364). But it will be observed that the later expression was appropriate to describe some part of the high seas adjacent to the coasts of the United Kingdom (cf. the observations of *Lindley* L.J. in *The Mecca* (1)). When s. 317 of the *Navigation Act* came to be enacted similar words—" on or near the coasts of Australia "—were chosen but the section itself was expressly restricted to ships wrecked, stranded or in distress at any such place.

Assuming then, as it was for the purposes of the argument on this aspect of the case, that a Court of Admiralty would, apart from s. 317, have had jurisdiction to entertain a claim for salvage in the circumstances disclosed in the pleadings, I can see nothing in the terms of that section to destroy that right. It is completely silent concerning salvage of cargo and its obvious purpose was not to substitute new rights for existing rights but merely to enable claims to be entertained for salvage where services had been performed otherwise than on the high seas.

I should add that as at present advised I can see no reason for thinking that the statement of claim seeks to claim for services performed, either wholly or in part, otherwise than on the high seas : see *The Mecca* (2).

The argument of the defendant on this point, however, fails *in limine* for it is impossible to say that the coasts of the Territory of New Guinea are part of the coasts of Australia or of the Commonwealth. That this is so readily appears from a perusal of the *Papua and New Guinea Act* 1949-1950. The history, since 1920, of the administration of the Territory of New Guinea, first of all, under mandate from the League of Nations and, thereafter, as a Trust Territory and finally in an " administration union " with the Territory of Papua, as recited in the preamble to that Act, is sufficient to dispose of any suggestion that it is part of Australia or part of the Commonwealth. Moreover, the reasons in *Ffrost* v. *Stevenson* (3) clearly recognise that it is not.

Finally, the *Navigation Act* itself plainly distinguishes between Australia and territories under the authority of the Commonwealth for by s. 6 the expression " Australian-trade ships " includes vessels, *inter alia*, ships employed in trading between Australia and territories under the authority of the Commonwealth. There is, I

(1) (1895) P. 95, at pp. 107, 108.
(2) (1895) P. 95.
(3) (1937) 58 C.L.R. 528.

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should think, no reason why the expression " Australia ", as used in s. 317, should be understood to have any wider signification. This is sufficient to dispose of the defence based on s. 317 and the demurrer to the paragraphs of the defence which raise it should be upheld.

The question whether the failure to institute proceedings until after the expiration of two years from the performance of the salvage services alleged is fatal to the plaintiff's claim depends upon the true construction of s. 396 of the *Navigation Act*.

For the defendant it is asserted that the relevant effect of sub-s. (1) is to provide that no action shall be maintainable to enforce any claim or lien in respect of any salvage services after the expiration of the prescribed period, whilst the plaintiff, on the other hand, contends that the sub-section extends no further than to prescribe a period of limitation in relation to actions to enforce claims and liens against vessels and their owners in respect of the causes of action specified, including salvage.

The immediate source of s. 396 is to be found in s. 8 of the *Maritime Conventions Act*, 1911, an Imperial Act which expressly extended throughout the British Dominions, except the self-governing Dominions including the Commonwealth of Australia, and which was enacted with a view to carrying into effect the two conventions with respect to maritime collisions and salvage then recently concluded in Brussels.

The first paragraph of art. 7 of the first of these conventions was in the following terms: " Actions for the recovery of damages are barred after an interval of two years from the date of the casualty." It further provided that " the period within which an action must be instituted for enforcing the right to obtain contribution permitted by par. 3 of art. 4 is one year from the date of payment ".

By the same article the right was reserved to the high contracting parties to provide, by legislation in their respective countries, that the specified period should be extended in certain cases. Similar limitation provisions were contained in the Salvage Convention.

Article 10 provided that " A salvage action is barred after an interval of two years from the day on which the operations of assistance or salvage terminate " and a similar right was reserved by the third paragraph of that article to provide for the extension of the specified period in cases where it had not been possible to arrest the salved vessel in the territorial waters of the State of the plaintiff's domicile or principal place of business.

In attempting to construe s. 396 the defendant places considerable reliance on the provisions of the Salvage Convention. Sub-section

(1) of s. 396, it is said, is at least ambiguous and, since it was passed for the purpose of giving legislative effect to the rules agreed upon it is contended that the meaning which should be adopted is that which will produce this result.

There can be no doubt that the Salvage Convention was concerned with all salvage claims. Article 1 provided that assistance and salvage of sea-going vessels in danger, of any things on board, and of freight and passage money, should be subject to the ensuing provisions of the Convention and, in spite of a tenuous argument founded upon the third paragraph of art. 10, the intention is clear that the limitation provision was intended to be applicable to all claims for salvage.

Then, the argument proceeds, when one comes to consider s. 396 one sees that the legislature has, in one sub-section, proceeded to implement the provisions of each convention, that is to say, to prescribe a period of limitation with respect to claims against ships and their owners in respect of damage done by one ship to another or to its cargo or persons on board and with respect to claims for salvage services. This method of approach, however, is not open, unless, considered by itself, s. 396 (1) is found to be reasonably susceptible of more than one meaning. If it is ambiguous it is, upon long-established authority, permissible to take these extraneous matters into consideration but if its language is appropriate to afford a measure of protection to shipowners only that must be the end of the matter.

The first thing that may be said about s. 396 is that, on its face, it is a section which deals with three categories of claims. These are claims in respect of damage done by one vessel to another or to its cargo or to persons on board, claims for salvage and claims for contribution under s. 261.

In substance these categories are quite distinct and different. Two of the categories are dealt with in sub-s. (1) which prescribes two years as the appropriate period of limitation, whilst the third category is dealt with in sub-s. (2) where the prescribed period is one year only. In passing it may, perhaps, be said that although s. 8 of the *Maritime Conventions Act* 1911 dealt with all three categories in one paragraph, it was found convenient in drafting s. 396 to deal separately with causes of action for which different periods of limitation were to be prescribed.

In approaching the construction of sub-s. (1) it is, I think, of importance to bear in mind that it deals with distinct categories of claims. That is to say it deals with claims in respect of loss or

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damage to vessels, their cargo and persons on board, and claims in respect of salvage services. But it does not deal with *all* claims in respect of damage to vessels, their cargo and persons on board; its operation is restricted to cases where the damage is occasioned, wholly or partly, by the fault of another vessel.

If, in framing the first part of s. 396, the draftsman had omitted the words " against a vessel or her owners " and also the subsequent reference to the " former vessel " and if the reference to " another vessel " had been to " any vessel " this part of the section would have travelled far beyond its obvious purpose. This purpose, which is made clear by the interpolation of the words " against a vessel or its owners " and by the later reference to the " former vessel ", was to prescribe a period of limitation with respect to damage occasioned in a particular way, that is to say, damage occasioned by the fault of one vessel to another vessel or to cargo or persons on the latter vessel. This, in effect, is the subject matter with which the first part of s. 396 (1) purports to deal and its operation is so confined by the use of the words referred to.

Such being the obvious primary purpose of those words there is no reason for thinking that they were intended to control the operation of the whole of sub-s. (1) though, of course, if no other construction is reasonably open it is the one which must be adopted. But the reference to " salvage services of any kind " is introduced into the latter part of the sub-section by the repetition of the words " or in respect of " and it does not appear to me to be unnatural to understand the following words as introductory of an entirely new subject matter.

Strictly the repetition of those words was unnecessary unless the section was proceeding to a different subject matter and it is, in my view, permissible to read the sub-section as dealing with any claim or lien in respect of any salvage services and not merely with claims or liens *against a vessel or her owners* in respect of salvage services. The view that the whole of the sub-section deals only with claims against ships and their owners may be superficially attractive but when it is found that the words which might be thought to produce this result serve an obvious purpose in defining the first category of claims, and no such purpose in relation to the second, that construction should in my opinion be rejected. Or perhaps it is sufficient to say that the contrary view is, at least, equally open.

In those circumstances I would, I think, be entitled to have regard to the provisions of the *Maritime Conventions Act* and to the conventions to which it is expressly purported to give effect. When

that is done there can be little doubt as to the true meaning of the relevant portion of s. 396.

For the reasons given the demurrer to par. 8 of the defence should be overruled and the demurrer to pars. 10, 11 and 12 allowed.

From that decision the plaintiff appealed to the Full High Court from that part of the order of *Taylor* J. in the exercise of the Admiralty Jurisdiction of the High Court made on 29th March 1957 which ordered that the demurrer to par. 8 of the defence should be overruled, that order being made after a hearing on 18th March 1957 to which the present appellant was plaintiff and the respondent was defendant. The appellant sought in lieu of that part of the order an order that the demurrer to par. 8 of the defence should be allowed and that the respondent should pay all the costs, upon the following amongst other grounds : that his Honour (1) was in error in overruling the demurrer in par. 8 of the defence ; (2) was in error in holding that s. 396 (1) of the *Navigation Act* 1912, as amended, required the proceedings brought by the plaintiff against the defendant to be commenced within two years from the date when the salvage services were rendered ; and (3) should have held that the limitation of time imposed by s. 396 (1) of the *Navigation Act* 1912, as amended, applies only to the enforcement of a claim or lien against a vessel or her owner in respect of the matters set forth in that sub-section.

N. H. Bowen Q.C. (with him *L. W. Street*), for the appellant. There is no claim brought against the vessel or her owners and the appellant accordingly says s. 396 has no application. The appellant's claim is not covered by the words used. It is not suggested in this case that there are any laches. A claim in respect of damage to cargo could well arise as a result of a collision which would not be a claim against the vessel or its owners. That would not be barred by the two-years limitation, but it would be subject to the laches limitation. A claim against a cargo-owner is not similar to a claim against a vessel or its owners. The limitation imposed by the section refers only to actions " against a vessel or its owners ". This is so as a matter of grammar and there is no ambiguity in the section. The text writers have consistently read it in the manner now contended for. Sub-section (3) supports this view. [He referred to *Temperley's Merchant Shipping Acts*, 5th ed. (1954) ; *Kennedy's Law of Civil Salvage*, 3rd ed. (1931), pp. 8, 11, 15, as showing that when the author is considering the question of limitation he is dealing only with salvage services ;

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Roscoe's Admiralty Practice, 4th ed. (1920), p. 215; 5th ed. (1931), p. 183, as showing that if the respondent's interpretation were the correct one it would be a gross error on the part of the text-book writers to state it as they have done; *MacLachlan's Law of Merchant Shipping*, 6th ed. (1923), pp. 516, 517; 7th ed. (1932), pp. 542, 543; *The Landovery Castle* (1) and *The Hesselmoor and The Sergeant* (2).] There is no ambiguity in the section which forces one to go elsewhere for assistance. That is shown by the above-mentioned text writers and cases. The cases show that even though the owners may be common whoever salvages cargo is entitled to salvage service. Otherwise, if that were a defence to this action it would be so pleaded. The two Conventions were published on the same day, namely 23rd September 1910, one dealing with collisions and the other with salvage. The main prohibition suggested is completely general; it just says " A salvage action is barred after an interval of two years from the day on which operations for assistance or salvage terminated. There is a third category of claims, namely a category which derives from the collision convention; a category of contribution in respect of over-payments in the case of damage for loss of life or personal injuries. If a defendant is forced to pay an amount in excess of his true proportion in respect of damages for loss of life or personal injuries, he has a right of recovery against those also responsible, and that right is conferred upon him by s. 261 of the *Navigation Act*. [He referred to *The Cairnbahn* (3) and *Ellerman Lines Ltd.* v. *Murray* (4).] Naturally and grammatically the appellant's version would be clearly the natural meaning. The judge of first instance suggests the words were necessary in order to restrain the purpose of the collision part of the section so that it gave effect to the purpose in the convention. If they were put in, it effectuated the purpose; if they were omitted, it went far beyond that. The appellant joins issue with both of those propositions. [He referred to arts. 17 and 13 of the Collision Convention as appears in *Temperley's Merchant Shipping Acts*, 5th ed. (1954), p. 808.] True it is that the impression created by art. 1 is that there has to be a collision to satisfy the Convention, but by art. 13 the " Convention extends to the making good of damages which a vessel has caused to another or the goods or persons on board either by the execution or non-execution of a manoeuvre or by the non-observance of the regulations, even if no collision had actually taken place ". That only illustrates that the various types of people who claim are not simply

(1) (1920) P. 119, at pp. 123, 124.
(2) (1951) 1 Ll.L.R. 146, at p. 147.
(3) (1914) P. 25, at pp. 29, 30.
(4) (1931) A.C. 126, at pp. 131, 132, 143, 144, 147, 148.

vessels and their owners. Claimants dealt with by the Convention also include passengers, crew, owners of cargo, or persons interested in cargo. If it was desired to give effect to the Convention it would not be necessary to insert the words " the vessel or her owners ". The inquiry is directed to ascertaining why the words " the vessel or her owners " were put in at all. [He referred to arts. 1, 2, 7 and 10 of the Salvage Convention.] Both Conventions have been departed from. The Convention is departed from in the case of owners in order that they may know with certainty that after two years any claim becomes stale and the vessel consequently becomes safe from arrest. Claims against cargo were not in contemplation. Neither Convention is carried out completely. Leaving salvage out of it, the opening phrase is an integral phrase in which each word had work to do in relation to the other words in it. It is not, as it were, a clause and then another clause and then " in respect of ". It is all one clause, describing an action that is not maintainable and is the only action that is not maintainable in respect of collision damages. Unless an action brought for collision damages answers the whole of that description, the limitation does not apply to it. The only effect the introduction of the words limiting the action against the other vessel or her owner, has, is that the limitation only applies in the case where the action is against the strange vessel. This limitation does not apply, as it is now worded, to the case where the action is against the vessel to which passengers cargo and crew are related. The same reasons which would apply to require the insertion of the words limiting the case of actions against the vessel or her owner would apply in both cases. As to what may become the subject of salvage : see *Kennedy's Law of Civil Salvage*, 3rd ed. (1931), p. 2. One does not go to the Convention unless there be an ambiguity : as a matter of English one reads the phrase " in respect of " where appearing as relating to the whole phrase. The words introduced have the effect of cutting down types of action which will be limited, and, in relation to collision, and for the same reason, that there is no apparent reason in the section for selecting those particular types of action for special treatment even in relation to collision. It is not inherent in the subject matter, but if there be a reason it is common to both, that is in the case of action for the arrest of a vessel the time limit is placed there. For those reasons the plea relying on this section should not be upheld in this case.

Sir *Garfield Barwick* Q.C. (with him *B. Burdekin*), for the respondent. Section 476 of the *Merchant Shipping Act* 1854 (Imp.) enlarged

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the jurisdiction to all claims whatsoever relating to salvage, wherever performed in substance, whether on the high seas or in the body of a county, or partly in one place and partly in another, or partly on sea or partly on land. No one wishes to say that words which in their proper meaning are unambiguous in an Act and intractable, can be bent away from their natural meaning by extraneous considerations, whatever those considerations be. Text writers and judges in all the decided cases have never had to look at this for relevant purposes, but have looked at it for purposes which were apt in the particular cases they had, and in those circumstances their view, respectively, was quite all right. So recourse must be had to the section to determine whether it is plain and intractable in its form and what the section has to say in respect to the particular matter now in hand, namely, a claim against cargo-owners by the owners of a vessel for salvage. Section 396 purports to deal with distinct classes of subject matter of actions. There are two distinct claims of subject matter. It is accepted that the words " against a vessel or her owners " are an indispensable part of the description of the subject matter of the first class of action of these two classes. The first class of claim is a claim which is described by limiting the class of defendant and by emphasising that the defendant must be at fault. The words " against a vessel or her owners " are an indispensable part of the description of the first class, as are the words " whether such vessel be wholly or partly in fault ". It is divided off at the words " claim or lien ", or to make the break after the word " maintainable " would not prejudice the respondent. The word " action " should be reduced and brought very close to an action *in rem*. One reduces the width of the words " no action ", whereas there are other indications both in the words " any claim or lien " and in the description " any salvage services " which tend against the view that they were concerned simply with the situation of the vessel. The proviso in the Imperial statute and sub-s. (3) here do not tend against those views. There is no grammatical difficulty in reading the sub-section in any of the ways mentioned in this discussion. Where ambiguity is concerned regard is had not to the words but to the meaning, significantly, with some relevant purpose in mind. If one were to take the first class and begin at the words " in respect of " it would not give any meaning unless there are brought down the words " against the vessel or her owners " and the second class begins with the words " or in respect of any salvage services ". Part of the deliberative limitation referred to by the appellant is involved in the choice of the opening words " against a vessel or her owners ". Those

words not only seem to identify the possible defendant but in the way in which the section is drafted they do service in identifying the possible plaintiffs. The word "another" depends for its force upon the presence of the words "against a vessel" and the later words "caused by the fault of the former vessel". The word "lien" put against the word "claim" in the order of words, is not appropriate to the appellant's suggestion but it is quite appropriate to the respondent's suggestion. The word "lien" coming next to the word "against" has been caused by the draftsman wanting to limit his description of the causes of action in this manner by using the expression "against the vessel" and to do the double service referred to. The punctuation in the Imperial section is identical with the punctuation in the local section therefore the latter section will have the same meaning assigned to it as is assigned to the former section. The achievement of uniformity is desirable (*Piro* v. *W. Foster & Co. Ltd.* (1)); and that is particularly true in relation to the construction of such an Act as this. So, as to the use to be made of the Conventions, they are all to be treated as substantially referred to as in the preamble, because that is how they are in the Imperial Act. The idea of describing the first cause of action as being one against a vessel or her owners, where that vessel was wholly or partly in fault, is quite appropriate to the subject matter of the first category, and quite inappropriate to the second category. There is some explanation and logical reason for the introduction of the limitation against a vessel or her owners in relation to the first class of cause of action, but none in relation to the second. In selecting as the first class of action one against the vessel at fault and making the possible plaintiff the other vessel and those connected with her the draftsman in reality is carrying out the Convention. The draftsman would have to be very careful when he came to limit actions by crew, cargo and passenger against their own vessel, and as to what prescriptions at the time he made, and as to what causes of action he did limit. The proviso and sub-s. (3) give not a greater protection to the ship, but a greater protection to those who have a claim against it. It would not be right to say that from the proviso and sub-s. (3) there is some comfort and support for that idea, that it was deliberately intended to limit claims for salvage to claims against a vessel or her owner and not to include a wider class. The various reasons that exist for the limitation of the first class by the use of the words "against a vessel or her owners" are absent in respect of the salvage services. [He referred to *Maxwell* on *Interpretation of Statutes*, 10th ed.

(1) (1943) 68 C.L.R. 313.

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(1953), p. 148; *Stag Line Ltd.* v. *Foscolo, Mango & Co.* (1); *The President &c. of the Shire of Arapiles* v. *The Board of Land and Works* (2); *Dixon* v. *Todd* (3), the *Salvage Convention* and the *Collision Convention*.] The appellant does not pretend that there is any logical, historical or circumstantial connexion between the words "against a vessel or her owners" and salvage claims. The judgment of the judge below was correct.

N. H. Bowen Q.C., in reply.

Cur. adv. vult.

Mar. 11, 1958.

The following written judgments were delivered :—

DIXON C.J., MCTIERNAN AND WILLIAMS JJ. This appeal is from so much of an order of *Taylor* J. as overruled a plaintiff's demurrer to a paragraph in the defendant's defence in a suit brought in the Admiralty jurisdiction of this Court for an award for salvage services. The paragraph to which the plaintiff, who of course is the appellant, unsuccessfully demurred pleads that the salvage services in respect of which a salvage award is claimed were rendered more than two years before the suit was commenced. The defendant is an owner of part of the cargo carried by the ship to which the salvage services were rendered. That ship received assistance from two other ships. All three ships were owned by the plaintiff. For that reason the plaintiff's claim as shipowners for salvage services was confined to cargo. Apparently it was a mixed cargo and the defendant was sued as an owner of a certain consignment forming part of it so that there might be a test case. The plaintiff's contention is that the time bar of two years, which depends on s. 396 of the *Navigation Act* 1912-1953, does not apply to such a suit against a cargo-owner.

To make the matter clearer it may be as well briefly to state the facts as they appear from the pleadings. On 8th February 1953 the s.s. *Mangola*, a ship owned by the plaintiff, was on a voyage to Madang on the north coast of New Guinea when she grounded on a coral reef off the east coast of Kar Kar Island. She was carrying a general cargo of a value of about £155,000 including the defendant's consignment valued at £1,282. The motor ship *Bulolo*, which also was owned by the plaintiff, was lying at Madang at the time. She was despatched at once to the assistance of *Mangola* which she reached on the morning of 9th February. She made a number of attempts to tow *Mangola* off the reef. A third ship owned by the plaintiff, namely the motor ship *Malaita*, was on a voyage she was

(1) (1932) A.C. 328, at pp. 342, 350.
(2) (1904) 1 C.L.R. 679, at p. 686.
(3) (1904) 1 C.L.R. 320, at p. 326.

making from Rabaul to Samarai. She was diverted to Kar Kar Island and she reached *Mangola* late on the night of 11th February. In the conditions existing where *Mangola* was stranded it was not possible for both ships to combine in the attempt to tow her off and, after rendering assistance in lightening *Mangola*, *Bulolo* left the scene on the evening of 13th February. At length, on the morning of 15th February 1953, the efforts of *Malaita* were successful in freeing *Mangola* from the reef and on the same day both vessels arrived at Madang, *Mangola* proceeding under her own steam.

The writ of summons by which this suit was commenced was not issued until 21st February 1956, a year after the expiry of the period of limitation of two years fixed by s. 396 (1) for the cases it covers. The question raised by the demurrer is whether the present is a case which the section does cover. The reason why the plaintiff says that the case is not within the provision is that, according to his contention, the period of limitation is confined to actions to enforce claims or liens against vessels or their owners. As will appear the provision deals with two things, viz. (1) damage or loss to a vessel her cargo or freight or any property aboard her and damages for loss of life or personal injury suffered by a person on board the vessel, and (2) salvage services. It is quite clear on the words of s. 396 (1) that in the case of the first of these two things the time bar is restricted to actions to enforce a claim or lien in respect thereof against another vessel or its owners. But on the text of the sub-section it is anything but clear that in the case of the second, namely salvage services, the time bar does not apply to every action for an award whether with reference to ship cargo or any other maritime property in respect to the saving of which a salvage award may be claimed. *Taylor* J. decided that on the proper interpretation of the provision the time bar is applicable to a claim for an award for the salvage of cargo and therefore overruled the demurrer to the plea that the action was out of time. It is the correctness of that decision we have to consider on this appeal.

Before turning to the question, however, it may be desirable to say that it is well settled that the owner of a ship rendering salvage services to another ship owned by him, laden with cargo which is thereby saved, is prima facie entitled to obtain a salvage award from the cargo-owners: see *The Miranda* (1); *The Cargo ex Laertes* (2). It is or may be otherwise if the shipowner happens to be liable upon his contract of affreightment to the cargo-owners for the loss or injury to the cargo from which it was saved by the

(1) (1872) 3 L.R. Ecc. & Ad. 561. (2) (1887) L.R. 12 P. 187.

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salvage services: see *The Glenfruin* (1) and cf. *The Beaverford* v. *The Kafiristan* (2) and *The Susan V. Luckenbach* v. *Admiralty Commissioners* (3).

No question arises upon the demurrer which *Taylor* J. overruled as to the prima facie foundation of the plaintiff's claim for a salvage award with respect to the cargo. The matter to be decided is simply whether upon the true interpretation of s. 396 (1) of the *Navigation Act* that provision covers the claim and so bars the action. The text of the sub-section is as follows: "No action shall be maintainable to enforce any claim or lien against a vessel or her owners in respect of any damage or loss to another vessel, her cargo or freight, or any property on board her, or damage for loss of life or personal injuries suffered by any person on board her, caused by the fault of the former vessel, whether such vessel be wholly or partly in fault, or in respect of any salvage services, unless proceedings therein are commenced within two years from the date when the damage or loss or injury was caused or the salvage services were rendered."

It will be seen that if the words following the expression "to enforce a claim or lien against a vessel or her owners", namely the words "in respect of any damage or loss to another vessel, her cargo or freight" etc. are to be treated as an alternative balanced, so to speak, with the words "or in respect of any salvage services", the whole section is limited to claims or liens against a vessel or her owners. The consequence of that construction would be to exclude from the operation of the section a claim exclusively with respect to cargo or against cargo-owners. If on the other hand the alternatives which the section intends to create attach, so to speak, to the word "maintainable" so that the provision in relation to salvage services would read "no action shall be maintainable . . . in respect of any salvage services", then the time limit applies equally well to cargo as to any other maritime property for the saving of which a salvage award may be obtained. There is in truth a choice of three points to which you may go back and attach the alternative "or in respect of salvage services", when you notionally omit the intervening first alternative containing what may be called the operative statement with reference to damage or loss caused by the interaction of two vessels. Thus so far as it relates to salvage services the provision may be read: (i) No action shall be maintainable . . . in respect of any salvage services unless the proceedings therein are commenced within two years from the date when . . . the salvage services were rendered; or,—(ii) No action shall be maintainable to enforce any claim or lien . . . in

(1) (1885) 10 P.D. 103. (2) (1938) A.C. 136. (3) (1951) P. 197.

respect of any salvage services unless proceedings therein are commenced within two years from the date when . . . the salvage services were rendered; or,—(iii) No action shall be maintainable to enforce any claim or lien against a vessel or her owners . . . in respect of any salvage services unless proceedings therein are commenced within two years from the date when . . . the salvage services were rendered.

On either the first or second of these three readings an action for a salvage award with respect to cargo, alike with an action for an award with respect to ship and freight, must be brought within two years. On the third reading the time bar cannot apply to an action brought only for an award for salvage services by which cargo was saved. For such an action will be against cargo-owners and not against a vessel or her owners. The appellant says that the grammatical meaning of the sub-section requires that they should be read in the third way. This reliance on grammar is, we think, a mistake. Arrangement or symmetry and grammar are different things. Each of the foregoing divisions of the sub-section is equally grammatical with the others, but the third represents a more symmetrical use of formal arrangement. It balances the two uses of the words " in respect of " one against the other, just as if " either " had been put before the first of them. As a result it is more natural for the mind to treat the repetition of the words " in respect of " as indicating that the alternatives are " in respect of any damage or loss to another vessel " etc. and " in respect of any salvage service ". It may indeed be conceded that prima facie, at least to one who attends rather to the arrangement than to more substantial considerations, this is the more natural meaning of the sentence which the sub-section embodies. But closer attention to the text will show that it is not really constructed with methodical care. For it will be noticed that under the first " in respect of " and governed by that expression is the alternative " or damage for loss of life or personal injuries ". Apart from the fact that " damage " is an evident mistake for " damages ", if the words " in respect of " began each of the alternatives methodical composition might have suggested a repetition of them before the words " damage for loss of life or personal injuries ", though of course if the draftsman had used the expression there he might have made it doubtful whether the words " caused by the fault of the former vessel " attached not only to that alternative but to what preceded. But conceding that at a first reading one may find it somewhat more natural to balance the two uses of the expression " in respect of " against one another, that is, in other words, mentally to read

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"either" before the first of them, yet, we think that as soon as one's consideration turns to the substance of the matter, such a reading is seen to mean a distinction between the salvage of ships and the salvage of cargo for which no reason can be found.

The first part of the sub-section obviously deals with collisions between ships and perhaps other damage done by the interaction of one ship with another where the cause of action is based on fault. There is every reason for describing suits brought on causes of action arising from such relations as proceedings against vessels or their owners. But the law of salvage has a wider application and no reason can be advanced for dividing up salvage claims so that a period of limitation of two years applies only to actions against a ship or her owners, and not to an action against cargo-owners. It is difficult to suppose that it was really intended to exclude claims against cargo-owners for a salvage award from the operation of sub-s. (1) of s. 396.

It is said however that some support can be found in sub-s. (3) for the view that sub-s. (1) is entirely restricted to actions against ships or their owners. Sub-section (3) authorises a Court to extend the time of limitation prescribed by sub-s. (1). It gives a discretion applicable over the whole field covered by sub-s. (1) whatever that field may be. But then a second limb of sub-s. (3) requires the Court to extend the period, if the Court is satisfied that during the period of two years there has been no reasonable opportunity of arresting the vessel within the jurisdiction of the Court or within the territorial waters of the country to which the plaintiff's ship belongs or in which he resides or has his principal place of business. In that case the Court is to enlarge the time to an extent sufficient to give such reasonable opportunity. It would, we think, be illogical to treat this second limb as intended to cover the whole field of sub-s. (1) and on that supposition to read sub-s. (1) as limited to the area in which sub-s. (3) could apply. In truth except for the natural instinct to read the two uses of "in respect of" as representing the introduction of the alternatives, there is nothing to support the view that actions in respect of salvage services are within sub-s. (1) of s. 396 only when they are brought against vessels or their owners.

Certain passages were read to us in which judges or text writers in paraphrasing s. 8 of the *Maritime Conventions Act* 1911 (1 & 2 Geo. V. c. 57), where s. 396 (1) finds its source, had evidently attached the words "in respect of any salvage services" to the opening words "no action shall be maintainable to enforce any claim or lien against a vessel or her owners". But in every such case the paraphrase had been made for some other purpose and it

was apparent that the point with which we have to deal had not presented itself to the mind. The passages do no more than evidence, what in any case is clear enough, viz. the first instinctive balancing by a reader of the two uses of " in respect of ". We think that the passages otherwise are of no help in interpreting sub-s. (1) of s. 396. The construction is quite open by which the words " in respect of any salvage services " are attached at an earlier point, namely either to the words " no action shall be maintainable " or " no action shall be maintainable to enforce any claim or lien ". It is a construction not only open; it is perfectly grammatical and it gives effect to the almost certain intention of the provision.

It is proper to add that the question of the interpretation of the sub-section which arises is, as it seems to us, an example of ambiguity of language or of the arrangement of language. We think therefore that it is admissible to turn for assistance to the history of s. 396. As we have said its source is in s. 8 of the *Maritime Conventions Act* 1911, a provision which contains the same equivocation of meaning. That Act begins with a preamble which refers to two Conventions signed in 1910 at Brussels one dealing with collisions between vessels and the other with salvage. The preamble recites that it is desirable that such amendment should be made in the law relating to merchant shipping as will enable effect to be given to the Conventions. This preamble may not be looked at or called in aid to control the meaning of words in themselves clear and unambiguous: per Lord *Parker*: *The Cairnbahn* (1). But the provisions relating to the limitation of actions with respect to salvage services can hardly be said to speak with clearness or certainty. The preamble remits the inquirer to the Conventions. Article 10 of the Convention upon salvage is as follows: " A salvage action is barred after an interval of two years from the day on which the operations of assistance or salvage terminate. The grounds upon which the said period of limitation may be suspended or interrupted are determined by the law of the court where the case is tried. The high contracting parties reserve to themselves the right to provide, by legislation in their respective countries, that the said period shall be extended in cases where it has not been possible to arrest the vessel assisted or salved in the territorial waters of the State in which the plaintiff has his domicile or principal place of business." If this article is compared with s. 8 of the *Maritime Conventions Act* 1911 (Imp.) or with s. 396 (1) of the *Navigation Act* it helps to explain those provisions as a whole. But the only point upon which assistance is needed in this case is covered by the general words " A salvage

(1) (1914) P. 25, at p. 30.

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is barred" etc. These words clearly include all salvage actions. Unless s. 8 was meant to stop short of carrying the article into full effect, it makes it almost certain that there was no intention of excluding actions for a salvage award in respect of cargo from the time bar. It greatly increases the probability that the whole difficulty is the accidental result of an attempt to give effect in one provision to both Conventions so far as they respectively deal with a limitation upon the time within which proceedings must be brought.

For the foregoing reasons we agree in the conclusion of *Taylor* J. We think that the appeal should be dismissed with costs.

WEBB J. This is an appeal from a judgment of *Taylor* J. holding that proceedings in an action by the appellant plaintiff, a shipowner, for reward for salvage services in respect of cargo of the respondent defendant were barred by s. 396 (1) of the *Navigation Act* 1912-1953 (Cth.), as they were commenced more than two years after the services were rendered.

Section 396 (1) provides:—"No action shall be maintainable to enforce any claim or lien against a vessel or her owners in respect of any damage or loss to another vessel, her cargo or freight, or any property on board her, or damage for loss of life or personal injuries suffered by any person on board her, caused by the fault of the former vessel, whether such vessel be wholly or partly in fault, or in respect of any salvage services, unless proceedings therein are commenced within two years from the date when the damage or loss or injury was caused or the salvage services were rendered."

This provision is in the same terms as s. 8 of the *Maritime Conventions Act* 1911 enacted by the Imperial Parliament following the two Conventions of 23rd September 1910, one dealing with damages arising from collisions, or encounters short of collisions, between ships, and the other with claims for salvage services. Article 7 of the first of these two Conventions provided, *inter alia*, that "actions for recovery of damages are barred after an interval of two years from the date of the casualty"; and art. 10 of the other Convention provided, *inter alia*, that "a salvage action is barred after an interval of two years from the day on which the operations of assistance or salvage terminate".

For the appellant it is submitted that s. 396 (1) is not ambiguous; that given its grammatical construction and natural meaning it provides for two categories of claims each introduced by the phrase "in respect of"; so that the antecedent common to both categories is the phrase—"against a vessel or her owners"; and that there is no reason to depart from this grammatical construction and natural

meaning because of anything elsewhere in the Act. If this is the correct view of s. 396 (1), then the limitation of two years has no application to salvage actions against cargo-owners. For the respondent it is submitted that the first category begins with the phrase " against a vessel or her owners ", so that these words are incorporated in and apply exclusively to that category. If that is so, then the limitation of two years applies also to all salvage actions. But it is further submitted for the respondent that if either construction is open, then there is an ambiguity and the provisions of the Maritime Conventions can be called in aid, more particularly s. 10 of the Salvage Convention which shows that the parties thereto intended that the limitation of two years should apply to all salvage actions. The argument for the respondent is that as the terms " another vessel ", " former vessel " and " vessel wholly or partly in fault " refer to " vessel " where the term is first used in s. 396 (1) the latter term should be included in the first category, as being indispensable to it; and further that if the term " vessel wholly or partly in fault " were placed after the term " vessel " where it first appears then, to employ counsel's phraseology, the " significance of this description ", which I understand to refer to the first category, would not be affected. That is true; but that transposition, whilst leaving the first category unaffected, does destroy the operation of the phrase " against a vessel or its owners " as an antecedent common to both categories. It is for that reason that the transposition is relied upon, either as showing the true meaning of s. 396 (1) or at least as revealing an ambiguity warranting the convention being called in aid. But it does not follow that because the term " vessel " where it first appears in s. 396 (1) is indispensable to the description of the first category it is necessarily exclusive to that category; it can still perform a dual purpose and be at the same time a common antecedent of both categories. Nor are we justified in making a transposition of the words of a section in order to create an ambiguity that does not otherwise exist.

I think that the grammatical construction and natural meaning of s. 396 (1) are as submitted for the appellant and there is nothing to warrant a departure therefrom. In the absence of any ambiguity in the section we are not at liberty to call the Convention in aid: *The Cairnbahn* (1) per Lord *Parker*; *Ellerman Lines Ltd.* v. *Murray* (2) per Lord *Tomlin* (3) and Lord *Macmillan* (4).

It is interesting to note that English High Court Judges and textbook writers without exception appear to have construed s. 8

(1) (1914) P., at p. 30.
(2) (1931) A.C. 126.
(3) (1931) A.C., at p. 147.
(4) (1931) A.C., at p. 148.

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of the *Maritime Convention Act* 1911 as not barring all salvage actions after two years, although it should be stated that their Lordships do not appear to have had the assistance of argument in any of the cases to which we were referred. Apparently both Bar and Bench concerned thought the meaning of s. 8 was so clear as not to permit of argument. See *Llandovery Castle* (1) per *Hill* J. *The Hesselmoor and The Sergeant* (2) per *Willmer* J.; *Kennedy's Law of Civil Salvage*, 3rd ed. (1931), p. 189; *McLachlan* on *Merchant Shipping*, 7th ed. (1932), pp. 542, 543; *Temperley* on *Merchant Shipping Acts*, 5th ed. (1954), pp. 565, 566. Their Lordships and the text-book writers would have known the history of s. 8 and the terms of the Conventions and if it occurred to them that the language of the section was ambiguous they would have called the Convention in aid and taken a different view from that which they applied or adopted in their judgments and text-books.

I would allow the appeal.

KITTO J. The question in this appeal is whether s. 396 (1) of the *Navigation Act* 1912-1953 (Cth.), which prescribes a limitation of time for the commencement of certain actions, applies to an action to enforce a claim against an owner of cargo for salvage services rendered. The sub-section is in these terms:—"No action shall be maintainable to enforce any claim or lien against a vessel or her owners in respect of any damage or loss to another vessel, her cargo or freight, or any property on board her, or damage for loss of life or personal injuries suffered by any person on board her, caused by the fault of the former vessel, whether such vessel be wholly or partly in fault, or in respect of any salvage services, unless proceedings therein are commenced within two years from the date when the damage or loss or injury was caused or the salvage services were rendered."

The appellant's contention is that the expression "against a vessel or her owners" is to be considered as in effect repeated before "in respect of any salvage services". *Taylor* J., as the judge of first instance, rejected this reading of the provision and held that the time limit applies in the case of any action in respect of salvage services, whether against a vessel or her owners or against a cargo-owner. In my opinion the decision was correct. The contrary view is, as his Honour observed, superficially attractive; for the repetition of "in respect of" suggests at first sight that the sub-section is dealing in both its branches with claims or liens against vessels and their owners. But the attractiveness of this reading disappears upon closer examination. The first class of

(1) (1920) P. 119, at p. 124. (2) (1951) 1 Ll.L.R. 146.

claims or liens with which the provision deals consists of those which arise from damage or loss caused (wholly or partly) by the fault of one vessel to another vessel or to the other vessel's cargo or freight or any property or person on board her. In providing for such cases, the course adopted by the draftsman has been to mention first the vessel in whose favour the time limit is being provided. That has enabled him to describe the vessel to which, or to property or persons on board which, the damage or loss has accrued as " another vessel ", and also to refer to the fault which has caused the damage or loss as the fault of the " former vessel ". The phrase " against a vessel or her owners " thus provides a convenient point of reference for later words of description. It need not have been used in order to exclude cases where damage has been caused otherwise than by a collision, e.g. when it has been caused by the fault of dock authorities; for that exclusion would be effected sufficiently by the description of the damage or loss as damage or loss caused by the fault of a vessel. The purpose of the critical phrase in relation to the first limb of the sub-section is therefore twofold: to describe one of the essential characteristics of every collision action, and to provide assistance in point of verbal expression for the descriptions of other characteristics of every such action.

In relation to the second limb of the sub-section, the words " against a vessel or her owners " have neither of these purposes to serve. If they apply to that limb at all they must have the different purpose of excluding from the application of the sub-section one particular kind of salvage actions, namely salvage actions against cargo-owners. This is an odd diversity of purpose to ascribe to a single expression. And odder still is the practical result; for no one has been able to suggest any plausible ground for thinking it likely that the legislature would wish, while protecting vessels and their owners against claims more than two years old, to leave cargo-owners without a similar protection.

The fact is, as the respondent has submitted, that the sub-section deals with two disparate classes of action, and that the reasons which exist for describing an action of the one class as being against a vessel or her owners, and which fully account for the use of the disputed words, do not exist with respect to an action of the other class. There is another reason also for not carrying those words down into the description of the second class of action. Section 396 (1) derives from, and, so far as material, is in terms identical with, s. 8 of the *Maritime Conventions Act* 1911 (Imp.). That Act contained a recital (since repealed) that at a conference held at

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Brussels in the year 1910 two Conventions, dealing respectively with collisions between vessels and with salvage, were signed on behalf of His Majesty, and that it was desirable that such amendments should be made in the law relating to merchant shipping as would enable effect to be given to the conventions. Sections 1 to 5 were headed "Provisions as to Collisions etc."; ss. 6 and 7 were headed "Provisions as to Salvage"; and the remaining ss. 8 to 10, were headed "General Provisions". Each Convention provided for a time limit of two years, the Collisions Convention by art. 7 and the Salvage Convention by art. 10. The latter was not confined to salvage actions against ships and their owners, and indeed art. 1 provided that the salvage, not only of vessels, but of "any things on board" should be subject to the provisions which followed. When the United Kingdom Act, in the course of giving effect to the Conventions, took up the topic of a time limit upon actions it dealt with the two kinds of action, as has been pointed out, together. Unhappily it did so in terms which were not free from ambiguity; but that circumstance supplies a sufficient justification, and indeed a strong reason, for comparing the section with the relevant articles of the Conventions: *The Cairnbahn* (1). The comparison is wholly against construing s. 8 of that Act in the sense for which the appellant contends, for a provision dealing with a time limit internationally agreed upon for all collision actions and all salvage actions could hardly intend to make an exception of salvage actions in respect of cargo; and if so surprising an intention existed it would almost inevitably be expressed directly. The time limit in the United Kingdom Act must therefore surely extend to salvage actions in respect of cargo. If it does, the appellant's argument as a whole must fail; for it would be plainly unsound to give to the Australian provision a meaning different from that of its United Kingdom prototype.

We have been referred to a few passages in judgments and textbooks in which the appellant's construction of s. 396 (1) seems to have been taken for granted. But on no previous occasion, apparently, has the problem arisen for consideration, and it ought now, I think, to be decided as *res integra*.

For the foregoing reasons I am of opinion that the appeal should be dismissed.

Appeal dismissed with costs.

Solicitors for the appellant, *Ebsworth & Ebsworth.*
Solicitors for the respondent, *John Wight & Co.*

J. B.

(1) (1914) P. 25.