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A DISCUSSION OF THE HISTORY AND DEVELOPMENT OF THE ARRIVED SHIP DOCTRINE

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ABSTRACT

There are three requirements for laytime to commence in common law. Firstly, the vessel must arrive at the agreed destination. Secondly, the vessel must be ready to load or discharge the cargo. Lastly, notice of readiness must be given to charterers or their agents. Under English Law, especially as a doctrine "arrived ship" is considered when only first requirement is satisfied. At loading and unloading, there is limited time interval called laytime in common law which is either fixed or customary. So charterer must complete its loading or unloading in these time limits. If there is a limited time it is important to determine the commencing point. In common law it is determined by "arrived ship doctrine". This work will examine "the history and development of the arrived ship doctrine". It is going to be focused on the cases in English Courts.

Keywords: *Arrived Ship, Laytime, Notice of Readiness.*

1. INTRODUCTION

It has been correctly pointed out by one author that "there is always a destination to which the ship is to proceed for loading, and to which the goods are to be conveyed for delivery" (Tiberg, 1979:226). In these destinations for delivery and loading, there is a limited time interval which is called as laytime in common law, either fixed or customary. Laytime means the period of time agreed between the parties during which the owner will make and keep the vessel available for loading or discharging without payment additional to the freight (The Voylayrules 93 at rule 4) (URL-1). In a charterparty laytime clause specify the available period of time for loading and discharging which is free of charge to the charterer (Girvin, 2003:558; Hill, 2003:218). So charterer must complete its loading or disloading in these limited time intervals. If there is a limited time, it is important to determine the commencing point. Because if these limited time intervals or period of time is exceeded, then charterer has to pay

compensation either in demurrage or liquidated damages (Girvin, 2003:558). In common law the commencing point is determined by "arrived ship doctrine"

Charterer must have had notice of readiness for beginning to run of lay days against the charterer (Colinvaux, 1995:1315). To achive this, 'the ship must have arrived at the place agreed upon for loading or discharging, and must be ready to take in the cargo or to deliver it' (Colinvaux, 1995:1318). There are three requirements (Schofield, 2011:71; Davies, 2006:1; Hill, 2003:218), for laytime to commence in common law. Firstly, the vessel must arrived at the agreed destination. Secondly, the vessel must be in all respects ready to load or discharge the cargo. Lastly, notice of readiness must be given to charterers or their agents. As Davies (2006:1) mentioned if these three requirements are satisfied, the vessel is considered an "arrived ship". Notice of readiness cannot be given until the ship is an " arrived" ship (Colinvaux, 1995:1318). Under English Law, as a rule, the term "arrived ship" is considered when only three requirements are satisfied. Therefore it is mentioned that 'the current test in English Law on whether the ship has arrived or not has three requirements such; 1-) Has the ship reached the 'commercial area of the port' or the 'normal waiting place?, 2-) Is the ship ready to perform her cargo operations?, 3-) Has notice of readiness been tendered?'. (Packard, 1979:11). But one must also be borne in mind that especially as a doctrine "arrived ship" is also considered by many (include judges, arbitrators etc…) when only first requirement is satisfied and this work also used "arrived ship" as this meaning (Davies, 2006:1-2). Till the ship becomes 'arrived ship' shipowner does not entitled to give notice of readiness to load (or unload) (Leonis v. Rank, 1908:517-518). In other words the shipowner has no right to claim against the charterer that laytime to commence until the ship is an 'arrived ship'(Leonis v. Rank, 1908:517-518).

The arrived ship doctrine is important for voyage charters. In voyage charters there is four stages; 'loading (approach) voyage, the loading operation, the carrying voyage, and the discharging operation'(The "Johanna Oldendorff", 1973:304; Hill, 2003:214). In loading and carrying voyages the shipowner is alone, whereas loading and discharging operations are joint operations by shipowners and charterers (The "Johanna Oldendorff", 1973:304). There are three types of voyage charter; port, dock (wharf) and berth (Packard 1979:14; Girvin, 2003:560). It is 'relatively straightforwad' (Wilson, 2010:53) or lets say 'generally plain enough' (Leonis v. Rank, 1908:518) to determine whether the vessel becomes an "arrived ship", or not, when it is berth or dock charter. Because "the vessel becomes an arrived ship when it enters the specified berth or dock" (Wilson, 2010:54; Leonis v. Rank, 1908:518). For berth charters, this means that when the vessel is in the agreed berth, special destination is reached (Girvin, 2003:560) and the vessel does not need to move further for loading or discharging (Schofield, 2011:79). If the loading place is berth, the vessel becomes 'arrived ship' only when the vessel actually have berthed (Cooke et al., 2014:387). The loading and carrying voyage did not end until the vessel at that specified berth (The "Johanna Oldendorff", 1973:304). Berth means the specific place within a port where the vessel is to load or discharge (The Voylayrules 93 at rule 2) (URL-1). Even the berth as a word is not used in the charter, but the specific place is (or is to be) identified by its name, this definition shall still apply (The Voylayrules 93 at rule 2) (URL-1). Actually a berth is an individual point on a jetty, wharf or in a dock (Girvin, 2003:560). In a dock a berth generally named by numbers such as No 1 berth etc.. (Girvin, 2003:560). In conclusion berth charters are 'those in which the place to which the vessel is to proceed and there load and discharge is a single berth, either named in the charterparty itself or nominated thereafter by the charterer in the exercise of an express power to do so'(The "Johanna Oldendorff", 1973:303).

There is also no difficulty in saying whether a vessel arrives in a dock (The "Johanna Oldendorff", 1973:306). Dock is a structure that encloses water, often between two piers, in which ships are received for loading, unloading, safekeeping or repair (Garner, 2009:552). In a

dock charterparty, when a vessel arrives in dock, it means the vessel reaches its specified destinition (Schofield, 2011:80). The ship becomes an arrived ship when it enters the specified dock (Girvin, 2003:561). Namely, the laytime begins to run as soon as the ship has arrived in that dock (Colinvaux, 1995:1321). Dock charters are 'those in which the corresponding named or nominated place is a dock containing, it may be, several berths' (The "Johanna Oldendorff", 1973:303). In berth and dock charters the risk of delay is borne by the shipowner (Wilson, 2010:54; Girvin, 2003:560). In berth and dock charters, it is known when laytime would start to run (The "Johanna Oldendorff", 1973:303).

It is different for ports. Because ports are larger than docks or berths and "dependent on whether it is regarded from legal, geographical, administrative or commercial standpoint." (Cooke et al., 2014:387; Girvin, 2003:561). Therefore, to formulate the test 'arrived ship' is difficult in port charters (Girvin, 2003:561). Port means an area, within which vessels load or discharge cargo whether at berths, anchorages, buoys, or the like, and shall also include the usual places where vessels wait for their turn or are ordered or obliged to wait for their turn no matter the distance from that area (The Voylayrules 93 at rule 1) (URL-1). A port charter is 'in which the named or nominated place of loading is port containing, it may be, several docks each with several berths' (The "Johanna Oldendorff", 1973:303). In port charters, namely if the loading or discharging place is a port, there is two possibility; either agreed berth is available or not. If berth is available, the vessel must proceed immediately to the berth and tender notice of readiness when arrived, wheras if the agreed berth is occupied the vessel will normally reach a place within the port where the waitings ships lie (Cooke et al., 2014:387 – 388). In the latter situation, whether the ship becomes 'arrived ship' or not, is considered in several English cases.

This work will examine "the history and development of the arrived ship doctrine". It is going to be focused only on the leading cases regarding port charterparty in English Courts. Because it must be borne in mind that whole concept of the "arrived ship doctrine" was formed and developed by English Courts. It is going to be seen that there was ongoing development regarding this doctrine by courts for many years.

This work firstly focuses on the case "Leonis v. Rank" (Leonis Steamship Company, Limited v. Rank, Limited, [1908] 1 K.B. 499). Later it is going to be examined respectively the cases; The "Aello" (Agrimpex Hungarian Trading Company for Agricultural Products v. Sociedad Financiera de Bienes Raices, S.A. [1960] 1 Llyod's Rep. 623), The "Delian Spirit" (Shipping Developments Corporation S.A. v. V/O Sojuzneftexport [1971] 1 Llyod's Rep 506) and most importantly The "Johanna Oldendorff" (E.L. Oldendorff &CO. G.M.B.H v. Tradax Export S.A. [1973] 2 Llyod's Rep 285). Lastly this work focuses on the case The "Maratha Envoy" (Federal Commerce and Navigation Co. Ltd. v. Tradax Export S.A. [1977] 2 Llyod's Rep. 301). All cases deal with ports.

2. LEONIS STEAMSHIP COMPANY, LIMITED v. RANK, LIMITED (LEONIS v. RANK)

In this case, the vessel was ordered to Bahia which arrived February 24 and anchored about three ship's lengths from the railway pier which for waiting available berth (that because all berths were full) and which did not become available for a month. The question here is that whether the vessel becomes an arrived ship on February 24 or not.

The learned judge found that the vessel did not become an arrived ship on February 24, but a latter date, because the place which the vessel has anchored is not an usual place for loading but a possible place for loading (Leonis v. Rank, 1908:510). But the court of appeal reversed this decision. In leading judgement of Lord Justice Kennedy L.J., it is stated that; "Just as a port may have one set of limits, if viewed geographically, and another for fiscal or for

pilotage purposes, so when it is named in a commercial document, and for commercial purposes, the term is to be construed in a commercial sense… " (Leonis v. Rank, 1908:519).

Lord Justice Kennedy maintained that 'we must construe it in regard the "arrival" of the ship at that destination as meaning that port in commercial sense'(Leonis v. Rank, 1908:521). Commercial sense means what the person in regarding shipping business understands (Leonis v. Rank, 1908:521). Lord Justice Kennedy said that the commercial area of port, arrival within which makes the ship an arrived ship, and, as such, entitled to give notice of readiness to load, and at the expiration of the notice to begin to count lay days' (Leonis v. Rank, 1908:521). Lord Justice Kennedy also stated that 'to be that area of the named port of destination on arrival within which the master can effectively place his ship at the disposal of charter, the vessel herself being then, so far as she is concerned, ready to load, and as near as circumstances permit the actual loading spot, to be it quay or wharf, or pier, or mooring, and in a place where ships waiting for access to that spot usually lie...' (Leonis v. Rank, 1908:521 - 522).

It is clear that judge Kennedy mentioned that even one port describes as geographically or for fiscal or pilotage purposes, if it is named in commercial document which as in the case it is named in a commercial document, the area of port must be construed in commercial sense. As Davies (2006:4) correctly proclaimed that "the court disregarded the geographical, fiscal and pilotage limits of port, they focused on commercial area of port". So the court found that the vessel became an arrived ship on February 24, because it was in the commercial area of port on February 24.

To reach a conclusion Judge Kennedy refer to Carver's famous book (4th edt. Of Carriage by Sea) and stated that; "When the place named is a port, or other wide district, the lay days begin when the ship is ready, and at the freighter's disposal, within the named place in its commercial sense; though she may not be in a position to take in discharge cargo, and though she may not be at the wharf, dock, or other part of the place to which charterer may have properly required her to go" (Leonis v. Rank, 1908:523).

It must be said that this case brought the the concept of arrived ship doctrine dependent on whether or not the vessel reached the commercial limits of port. So, according the findings of this case it can be proclaimed that reaching the commercial area of the port means the end of voyage (Schofield, 2011:90). But as Davies (2006:4) mentioned "with the advance of time and the growth/expansion of ports it became more difficult to delineate the "commercial area". So that, to conclude it can be said that for this case it was not difficult to delineate the limits of commercial place of ports, because the port was not large and the vessel has anchored only a few ship's length off the pier. But what is going to happen for the larger ports?

3. THE "AELLO" (AGRIMPEX HUNGARIAN TRADING COMPANY FOR AGRICULTURAL PRODUCTS v. SOCIEDAD FINANCIERA DE BIENES RAICES, S.A.)

In this case the question is that whether the vessel the "Aello" becomes an arrived ship when she anchored Buenos Aires Roads on October 12, 1954 which is near Intersection, some 22 miles and three hours away from the loading berths and here was not the usual waiting place. In this case 'the "Aello", in the first instance, proceed up the River Paran to Rosario and there loaded a part cargo of maize, completing this operation at 6 p.m. on October 11, 1954. She was then ordered by the charterers to proceed to Buenos Aires and there load the balance of such cargo…Aello returned down river to Buenos Aires and anchored in Beuones Aires Roads at 1.30 p.m. on October 12, 1954. Buenos Aires Roads are in the vicinity of a point in the estuary known as "Intersection" which is marked by a moored hulk for the use of port officials…. Intersection is some 22 miles down river from nearest point in the dock areas at facilities for loading grain are provided' (The "Aello", 1960:658). On September 1 there a resolution by port

authorities was in force. According to resolution, "in consequence of acute shorthage of maize cargoes, no vessel intending to load maize was allowed to enter the inner harbour without giro (which would allocate the vessel a berth), and no giro could be issued to any vessel unless a corgo of maize was available for her, and no such cargo was became available for the "Aello" until October 29" (The "Aello", 1960:659).

In the court of appeal, court has found that the vessel must reach to commercial area as the Leonis v. Rank case to become an arrived ship and in this sense, the "Aello" is not an arrived ship. Parker L.J. said that " the commercial area was intented to be part of the port where a ship can be loaded when a berth is available" (The "Aello", 1958 (2 Llyod's Rep. 65):77). As one author correctly mentioned that "this requirement to be an arrived ship the vessel must be in an area where loading or discharging takes place, became known as "the parker" test" (Schofield, 2011:92). When the case has brought before The House of Lords the majority of Lords confirmed the Court of Appeal decision. Lord Keith of Avonholm emphasized the below points (The "Aello", 1960:649);

1. The free anchorage was not an area within the port in which grain ships usually lay when waiting to load.
2. The lying of the Aello in the Roads was a purely temporary incident.
3. The vessel lay some 22 miles from the dock area and still to finish her voyage to Buenos Aires…
4. ..
5. No loading or unloading of grain ships ever took place at the anchorage in the Roads.
6. The ship was no doubt as near as she could get "the actual loading spot" for some time after her arrival at the anchorage…
7. The ship could not be reasonably held to have been placed at the disposal of the charterer while she was lying at the Roads.
8. The fact that oil vessels or other types of vessel might load or discharge in the Roads is nothing to the point. There may be different commercial areas in a port for different types of vessel and cargo….

Because of above reasons Lord Keith of Avonholm found that the Aello is not an arrived ship when she anchored in the Roads.

In addition, Lord Jenkins stated that;

"…the commercial area of the port that is to say, the area in which the actual loading spot is to be found and which vessels seeking to load cargo of the relevant description usually go, and in which the business of loading such cargo is usually carried out… The judgements as I think clearly postulate as the "commercial area" a physical area capable (though no doubt, only within broad limits) of identification on a map." (The "Aello", 1960:660). "...loading or unloading (grain) operations at 'Intersection' which would have been carried out by means of lighters sent out from the dock area, is considered impracticable and is never done" (The "Aello", 1960:658 - 659).

According to Lord Jenkins (The "Aello", 1960:660), when the ships enter the commercial area, she is an 'arrived ship', until the she is not. It can be said that this case "clarified the application of the commercial area principle" (Davies, 2006:6). In this case it must be noticed that the port was larger port than the one in Leonis v. Rank's. So also this case is important for larger ports to determine the exact place for commercial area. In addition to these, bearing in mind the cargo which the vessel cary, is also important. Because due to "the

nature of cargo" (Davies, 2006:6), the loading and discharging place can be changed, so the commercial area in the port can vary due to the cargo. So as it has been said by one author that "parts of a port would not constitute the commercial area for a particular vessel unless that vessel was within the area of the port which handled the goods to be loaded/discharged." (Davies, 2006:6). This provide certainty as some author mentioned because whether the vessel becomes an arrived ship can be understood easily by only looking the nature of the cargo and the part of the port which this kind of cargo is loading/discharging. (Davies, 2006:6).

4. THE "DELIAN SPIRIT" (SHIPPING DEVELOPMENTS CORPORATION S.A. v. V/O SOJUZNEFTEXPORT)

In this case charterers ordered the vessel to Tuapse, which is a smaller port than the one in the "Aello". The port was quite a small port which has a breakwater in which is a jetty with berths for four tankers. "If the berths are all occupied, oil tankers are not allowed to wait inside the breakwater; they have to remain outside at an anchorage place within the roads" (The "Delian Spirit", 1971:507). When the "Delian Spirit" entered the port, the berths all four were occupied, so the vessel anchored in the roads one and a quarter miles away from the jetty which is the place where the tankers in waiting always have to lie, but in place outside the breakwater. On the morning of the vessel's arrival on February 19, 1964, at 8:00, she gave notice of readiness. Although it was a 6 hours' notice, she could not get in for 4 ½ day. It was only in February 24, 1964, at 8:00, that the charterres can provide an available berth. The issue is here that whether vessel becomes an arrived ship at the anchorage or not. Although the learned umpire found that the vessel is not an arrived ship, The High Court and Court of Appeal agreed on the contrast that they found the vessel became an arrived ship at the anchorage under commercial area principle. Lord Denning in the court of appeal stated that "the present case seems to fall within the Leonis, the "Delian Spirit" waited at the alloted customary and usual place for tankers waiting to get in, it was the only place and she was not allowed to inside the breakwater and waited within a distance of 1, 1/4 miles from jetty, when applying the classic test of Lord Justice Kennedy in the case of Leonis (at 521), she is an arrived ship" (The "Delian Spirit", 1971:509). Justice Sir Gordon Willmer also refer Lord Justice Kennedy in the case of Leonis and said that the phrase 'arrived ship' has to be construed in a commercial sense and the "Delian Spririt" was in the anchorage appointed for ships proceeding to the oil berth within the harbour" (The "Delian Spirit", 1971:512).

But it must be said that according to the correct understanding of the commercial area principle under the cases Leonis v. Rank and The "Aello" the findings of the High Court and Court of Appeal are not quite right. Namely, as Davies (2006:8; also see Schofield, 2011:94) mentioned, although the the decision of the courts was in accordance with commonsense it appeared to be wrong under application of the "commercial area" test, the principle which had been adopted by the House of Lords in the "Aello".

This decision was later severely criticised by Lord Reid in the House of Lords. Lord Reid correctly stated that ' I find this irreconcilable with... the definition of 'commercial area' by Lord Justice Parker which was adopted. I cannot see how it can possibly be said that the open sea outside the breakwater was "within that part of the port where a ship can be loaded when a berth is available' (The "Johanna Oldendorff", 1973:291).

It has been believed that this case caused some uncertainties in implementing of the commercial area principle in arrived ship doctrine. In addition to that it has been maintained that although there has some flexibility in commercial area principle, it caused economic unjust to the shipowners and this flexibility sometimes can be reasoned for the uncertainty as in The "Delian Spirit" case (Davies, 2006:7). It began to be seen that "the increase in the size of ship cause some difficulties" (Davies, 2006:7) on implementation of the commercial area concept".

Therefore the arrived ship doctrine was needed to be reversed at that time. And it did with The "Johanna Oldendorff" case.

5. THE "JOHANNA OLDENDORFF" (E.L. OLDENDORFF &CO. G.M.B.H v. TRADAX EXPORT S.A.)

Till this case all "arrived ship doctrine" was formed and implemented according to "commercial area" principle. In other words, insofar a vessel must have arrived in "the commercial area of the port" before notice of readiness could be tendered. (Cooke et al., 2014:387 – 388). But since this case all "arrived ship doctrine" has been exercised according to "geographical and administrative area" principle. It may be submitted that The House of Lords has changed all concept of "arrived ship doctrine" in this case.

In this case the "Johanna Oldendorff", the vessel, had been ordered to the Liverpool/Birkenhead, but there were no available berth when the vessel reached the port. So the vessel was ordered to anchor at the Mersey Bar which is 17 miles away from the dock area but within the administrative limits of the port. The question is that whether the vessel has become an arrived ship in Mersey Bar, or not. The Appeal Court ([1972] 2 Llyod's Rep 292) found that the vessel was not arrived ship, because she had not reached the commercial area of the port. It is claimed that the appeal court decision was clearly right from a commercial point of view (Schofield, 2011:94). Whereas The House of Lords dismissed the appeal court decision and held that the vessel has become an arrived ship when in Mersey Bar. It must be borne in mind that underlying view in this case is based on "criticising the test of commercial area principle" (Wilson, 2010:54) of the case the "Aello*"*. With the decision of the "Johanna Oldendorff", the House of Lords overruled the decision (findings) of the case the "Aello".

The most important speech was given by Lord Reid in this case, what he said is known now is "Reid Test" (Schofield, 2011:92). 'The Parker test' in the "Aello" is replaced with 'the Reid test' (Schofield, 2011:82). It is stated in his speech that; "Before a ship can be said to have arrived at a port she must, if she cannot proceed immeadiately to a berth, have a reached a position within the port where she is at the immediate and effective disposition of the charterer. If she is at a place where waiting ships usually lie, she will be in such a position unless in some extraordinary circumstances proof of which would lie in the charterer. ...If the ship is waiting some other place in the port then it will be for the owner to prove that she is as fully at the disposition of the charterer…" (The "Johanna Oldendorff", 1973:291).

Lord Reid said (The "Johanna Oldendorff", 1973:291) very clearly that before a ship can be treated as an arrived ship she must be within the port and at the immediate and effective disposition of the charterer. First of all it can be understood from the above speech that the Reid test is regarding where there is a delay between the vessel's arrival in the port and its moving to a berth (Schofield, 2011:83). It is clear that in his speech, to be an arrived ship there are two requirements to be fulfilled (Davies, 2006:9; Schofield, 2011:83; Wilson, 2010:54; Hill, 2003:216). Firstly, the vessel must be within (the geographical, administrative and legal area of the) port. This can be understood also from the judge Viscount Dilhorne speech in the case. He stated that 'if the vessel is refused permission and ordered to wait outside the port by the port authority it is not an "arrived ship' (The "Johanna Oldendorff", 1973:302) . Lord Reid held that the ship was " at the Bar anchorage, within the legal, administrative and fiscal area of port" (The "Johanna Oldendorff", 1973:291). Secondly the vessel must be at the immediate and effective disposition of the charterer. If the vessel lies the usual waiting place in the port, "the vessel is presumed to be effectively at the disposal of the charterer", but if the vessel lies at some other place in the port, it will be for the owner to prove that the vessel is at the effective and immediate disposition of the charterer. This decision if compared to the commercial area understanding, widened the area which a vessel can be considered an arrived ship (Davies,

2006:12; see also Girvin, 2003:561). In conclusion, with this case, in port charters where no berth is available, the vessel must have reached a place within the the port where wating ships usually lie (Cooke et al., 2014:388).

Defining the legal limits of ports became a problem. Although Lord Reid claimed that "the area within which a port authority exercises its various powers can hardly be difficult to ascertain" (The "Johanna Oldendorff", 1973:291), many ports have not well defined legal limits (Davies, 2006:12; Girvin, 2003:562). In many cases it may have possible uncertainty to define the legal limits of ports. Wheras Lord Reid maintained that 'he finds it difficult to believe that there would, except perhaps rare cases, be any real dificulty in deciding whether at any particular port the usual waiting place was or was not within the port' (The "Johanna Oldendorff", 1973:291). So as Wilson correctly pointed out that "the possible weakness of the "Johanna Oldendorff" approach is that it fails to provide any really effective formula for identifying the port area in a specific case, despite the fact that the entire test hinges on this requirement" (Wilson, 2010:55). It has been also said (Hill, 2003:216; see also Girvin, 2003:562) that the only defect in the Reid test is the word "within". Because of these, it has been maintained that arbitrators have been faced with problems, regarding whether the usual waiting place is, or not, within the port (Davies, 2006:13).

As mentioned above, Lord Reid claimed that "the area within which a port authority exercises its various powers can hardly be difficult to ascertain". To determine the limits of 'within port' in legal and administrive sense, it is advised that 'the area within which the port authority exercised powers regulating the movements and conduct of ships might be an indication' (Girvin, 2003:561).

Does the vessel anchored at the usual waiting place would always be considered an arrived ship under a port charter according to findings of the "Oldendorff" case regardless of whether the usual waiting place was inside or outside the port limits? This question aroused in a few years in another case the "Maratha Envoy".

6. THE "MARATHA ENVOY" (FEDERAL COMMERCE AND NAVIGATION CO. LTD. v. TRADAX EXPORT S.A)

As Wilson (2010:55) mentioned "within four years (since the "Johanna Oldendorff") their Lordships were provided with an opportunity for second thoughts" with this case. But whether the result in this case is satisfactory or not, for all parties is arguable. It is submitted (Davies, 2006:15) that this case was a bad case because it was soon after the "Johanna Oldendorff" and also still the same three Lords in the "Johanna Oldendorff" sat in the "Maratha Envoy" case.

In this case, the vessel was nominated to Brake which is a river port on the Wesser, because of congestion in the port there were no available berth, so the vessel was ordered to proceed upstream and wait at the Wesser Light. But the problem was that this lightship was 25 miles away downstream from Brake and although it was normal waiting place for that size of vessels, it was outside the port limits. The question in this case was that whether this vessel became an arrived ship in the Weser or not. Firstly when this case has brought before the Court of Appeal, the court held that the vessel was an arrived ship when in Wesser. In his judgement Lord Denning indicated in the court of appeal that; "I think that, at the present day, a vessel should be held to be an arrived ship when she has reached the usual waiting place for the port, even though it may be a few miles outside the limits of the port itself. The reason being that she has completed her carrying voyage and is at the disposition of the charterers as effectively as if she was inside the port itself in the vicinity of a berth." ([1977] 1 Llyod's Rep. 217: 223).

That is to say, the court of appeal took held that the important and "decisive factor" (Wilson, 2010:55) was whether or not the vessel was immediately and effectively at the disposal of the charterer. Court of appeal held that there was no reason why a vessel should not be regarded as an 'arrived ship' merely because she was outside the strict port limits, provided that she had reached the normal waiting place for that port and was effectively at the disposition of the charterer. Lord Denning submitted that 'there is no decision which binds us to hold that a vessel cannot be an arrived ship until she gets within the limits of the ports' ([1977] 1 Llyod's Rep. 217:222). To reach a decision Lord Denning ([1977] 1 Llyod's Rep. 217: 223) refer to an arbitration case (Maritime Bulk Carriers v. Garnac Grain Co (The Polyfreedom), (1975) A.M.C. 1826) in which the tribunal by majority held that a vessel which arrived off the Hook of Holland and anchored within an area designated as recommended anchorage, but which was not fiscal, legal or geographical limits of the port of Rotterdam, for vessels waiting entry to the Port of Rotterdam, was an arrived ship.

Therefore according to the court of appeal whether the vessel outside the port or not, is unimportant. But as Wilson (2010:55) correctly mentioned that "The house of Lords had no hesitation in rejecting this heresy and restoring the position established in the "Johanna Oldendorff". Namely, The House of Lords held that the "Maratha Envoy" did not become an arrived ship while anchored at the Weser Light, because she was not within the limits of the port of Brake.

In this case Lord Diplock (The Maratha Envoy, 1977:305) firstly refered to Reid test; 'before a ship can be said to have arrived at a port she must, if she cannot proceed immeadiately to a berth, have reached a position within the port where she is at the immediate and effective disposition of the charterer', and secondly emphasised what Viscount Dilhorne said that "to become an arrived ship the vessel must be within the port limits, if the vessel is ordered to wait outside this vessel is not an arrived ship" .

In conclusion, the usual waiting place must be within the port, if it is outside the limits of the port, then no notice of readiness can be served (Cooke et al., 2014:388). So it is clear that The House of Lords underlined its tendency regarding "arrived ship doctrine " that they strictly in that same position with the Reid Test. There it can be said that the view of that a vessel anchored at the usual waiting area would always be considered an arrived ship, whether the waiting area was within or outside the port is rejected by the House of Lords (Schofield, 2011:95). It must be borne in mind that since that case still the Reid test prevails the "arrived ship doctrine". But one must consider that there are ports like Hook of Holland for Rotterdam which the usual waiting areas are outside the port (Hill, 2003:216). Therefore it is suggested (Hill, 2003:216) that the Reid test should have been widened in scope to say 'whether within or without the port'. Some charterparties like Asbatankvoy, provide a clause that notice of readiness maybe tendered, once the vessel has reached the customary anchorage, even this is at the outside of the official port limits (Girvin, 2003:562).

7. CONCLUSION

It has been seen that there were ongoing developments from commercial area principle to geographical-administrative area principle. All five case indicated one truth actually and it is that "the shipping business, the size and technology of the ships, the size of the port and the technology of communications uninterruptedly improves and changes in everyyear from a century". So the important thing is that whether the law can reach the speed of this improvement or not. But it must be said as Davies (2006:20). that "the courts have been so sluggish and slow regarding developments in the arrived ship concept".

Bearing in mind, either in the "Johanna Oldendorff" or in the "Maratha Envoy", The House of Lords thought that they provided legal certainty (Davies, 2006:21). But in shipping

business it does not seem so. As it has been reported by one author that "arbitrators have had problems put to them in this respect and, in many of those disputes, considerable time and expense was expended in searching for and providing evidence in order to attempt to show that the vessel was in or outside of the port" (Davies, 2006:21).

Therefore it can be said that providing the greater certainty with changing the law from Parker test to Reid test, has failed. Lord Diplock said (The Maratha Envoy, 1977:305) in the case of the "Maratha Envoy" that he is not aware that in practice the Reid test has proved difficulty of application as to whether the usual place where vessels wait their turn for a berth at a particular port lies within the limits of that port or not. But it must be said that contrast to Lord Diplock idea, the Reid test results difficulties for application (Davies, 2006:21; Wilson, 2010:55).

To summarize the current position regarding 'the arrived ship doctrine', as Lord Reid stated in the case of the "Johanna Oldendorff" : 'before a ship can be said to have arrived at a port she must if she cannot proceed immeadiately to a berth,have a reached a position within the port where she is at the immediate and effective disposition of the charterer'. Additionaly, it can be said that if there is no express provision dealing with how the misfortune risk of delay through congestion at the loading or discharging port is to be allocated between charterer and shipowner, the Reid test applied; 'in such a case it allocates the risk to the charterer when waiting place lies within the limits of the port; but the shipowner, when it lies outside those limits' (The Maratha Envoy, 1977:305). Briefly it is an arrived ship when (usual) waiting place lies within the limits of the port, it is not when it lies outside those limits, provided that the vessel is at the immediate and effective disposition of the charterer.

To conclude, it can be claimed and postulated that there are still things to be developed, the rules to be changed and grey areas to be clarified, regarding the "arrived ship doctrine". The most important thing is to provide legal certainty in these issues, because it's their right both shipowner and charterer to know exactly when the vessel becomes an arrived ship. Because the time is money in the shipping business.

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