143. [CIVIL DIVISION – APPEAL NO. 259]

A 5th JANUARY, 1999

**BARON SHIPPING CO. LIMITED**
**v.**
**LE PELLEY**

Before: COLLINS (PRESIDENT), HARMAN AND LORD CARLISLE, JJ.A

B **Period of limitation – loss or damage by and to vessels – Maritime Conventions Act 1911 – Law Reform (Tort) Guernsey Law 1979 – statutory interpretation**

See paragraph 70.

R.J. Collas for the Appellant
C J.M. Wessels for the Respondent

THE PRESIDENT: This is an appeal by Baron Shipping Co. Limited (to whom I will refer as "Baron") from a decision of the Royal Court, sitting as an Ordinary Court, given on 13th July 1998, at the hearing of the Exception de Fond, raised by Baron in their Defence to an action brought by James Matthew Le Pelley ("the Plaintiff") and placed on the Pleading List by Act of the Court dated 12th July 1996.

D The cause of action was in negligence, the allegation raised in the Cause being that one Captain Fakin, the servant or agent of Baron, so negligently manoeuvred the motor vessel Juniper in St. Peter Port Harbour on 11th May 1994, as to collide with the Plaintiff's yacht, Riscale, then moored in that harbour, thereby causing damage claimed in respect of the cost of repair accompanied by a claim for surveying fees.

The Exception de Fond read as follows:-
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"1. The Action by the Plaintiff is prescribed in that it is not maintainable for the following reasons-

(a) In the action he alleges that damage was caused to his yacht by the Defendant's vessel on 11th May 1994;

F (b) the Action was commenced by an ex parte application for substituted service tabled on 14th June 1996, and a summons issued pursuant thereto dated 21st June 1996, returnable in Court on 12th July 1996."

2. The Defendant will rely upon S.8 of the Maritime Conventions Act 1911, registered on the records of Guernsey on 18th January 1960."

G These dates were not in issue, nor was it in issue that if the Maritime Conventions Act 1911 S.8 was in force in relation to this claim the action would have been prescribed, subject to the obtaining of relief under the proviso to the same section.

By that Act ("the Act of 1911") which was by S.9 to "extend throughout His Majesty's Dominions and to any territories under his protection" and thus was an Act of the Imperial Parliament applicable to Guernsey, specific provision was made for limitation of actions in these terms:- A

> "8. No action shall be maintainable to enforce any claim or lien against a vessel for her owners in respect of damage or loss to another vessel, her cargo or freight, or any property on board her, or damages 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 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..." B

There followed a proviso under the terms of which there was a general power to extend time in the discretion of the Court, and a specific duty to extend time in one particular instance. These provisions, including the proviso, were consistent with and gave effect to Article 7 of the (Collision 1910) International Convention for the Unification of certain Rules of Law with respect to Collisions between Vessels, 1910. In this action an alternative claim was made under the terms of the Proviso; this claim remains alive and its relevance is dependent upon the outcome of this appeal. C

The Act was entitled "An Act to amend the Law relating to Merchant Shipping with a view to enabling certain Conventions to be carried into effect", and by the preamble reference was made to the Brussels Conventions of 1910. It was registered on the Records of Guernsey on 18th January 1960.

Section 8 of the Act of 1911 has been repealed in the United Kingdom by the Merchant Shipping Act 1995 ("the Act of 1995") but it is to be observed that by S.315 the latter Act extends only to England and Wales, Scotland and Northern Ireland. Section 8 therefore remains in force in Guernsey and no doubt in other dependencies of the Crown, subject to the arguments raised on this appeal in the case of Guernsey. D

I note also that by S.190 of the Act of 1995 a two year limitation period is retained, no doubt reflecting continuing treaty obligations undertaken by the Crown. There are substantial differences of detail, in that, for example, the wide discretion given by the proviso in the case of the Act of 1911 is narrowed to the taking into account of only certain specific circumstances upon the granting of an extension, but the two year period is retained. E

It is the intention of the States of Guernsey to prepare separate legislation for the Island, as distinct from requesting an extension of the Act of 1995, and in this connection the Court was referred to Billet D'Etat X of 1998. F

The contention advanced on behalf of the Plaintiff, which found favour with the Bailiff, was that this provision was repealed by the Law Reform (Tort)(Guernsey) Law, 1979 ("the law of 1979"), which by S.4(1) provided as follows:-

> "4(1) Notwithstanding the provisions of any enactment or any rule of law, an action founded on tort shall not be brought after the expiration of six years from the date on which the cause of action accrued." G

By S. 19(1) it was provided as follows:-

"In this Law, unless the context otherwise requires the following expressions have the meanings hereby respectfully assigned to them, that is to say:-

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'enactment' includes any enactment of the Parliament of the United Kingdom."

Finally, by S. 20 it is further provided that:-

"The Law set out in the left-hand column of the Schedule to this Law is hereby repealed to the extent set out in the right-hand column of the said Schedule."

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That Schedule referred to only one enactment which is not relevant to this appeal.

The Bailiff held that, despite a "different formula of words" to use his phrase, the later law did "impact on the earlier."

The Bailiff continued:-

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"The terms of both provisions correctly achieve a definition of the prescriptive periods, using different words that convey the same meaning; the two acts of legislation cannot therefore stand together."

"The effect of the Tort Law is that the Court can now entertain actions in tortious maritime collision for periods extended from two years to six. That creates no difficulty and no conflicts in practice. Undoubtedly the difference in the current Guernsey Law from that of

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the current UK Law has arisen from a draftsman's slip. However, a revision of the law to comply with the Maritime Conventions of 1910 would be a matter for the States."

The difference to which the Bailiff referred was, of course, between the phrase "an action shall not be brought" in the Law of 1979, and the phrase "unless proceedings are brought within" in the Act of 1911.

E The judgment, which contains no reference to authority, does not make it clear whether the Bailiff was treating the Law of 1979 as expressly or impliedly repealing the provisions of the Act of 1911; the phrase "the two acts of legislation cannot therefore stand together" may be more consistent with his having taken the operation of the Law of 1979 to be by way of an implied repeal of the Act of 1911, but I am left in a state of some uncertainty.

In these circumstances I approach the issue both by reference to express and implied repeal.

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The Law of 1979 provides for express repeal by the provisions of S.20 of the Law read together with the Schedule; this related only to the Married Women's Property Law of 1928. However, this is not necessarily restrictive in its effect, so that in my judgment it is open to a Court to hold that there may be an express repeal by one or more of the substantive provisions of a statute or law other than the repeal section, where this is sufficiently clear from the terms of that provision of the statute or law in question.

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We were referred to the works of a number of text book writers by way of an analysis of the modes of repeal, express and implied.

Thus with regard to express repeal, Halsbury's Laws of England (4th ed. re-issue) Vol. 44 (1) paras 1297 and 1298, read as follows:-

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> "No special wording is required to effect a repeal; the question is simply one of the intention of the legislator, but it is usual to distinguish between express and implied repeal though there is no difference in their effect."
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> "Although no special wording is needed to effect a repeal, certain formulas are in common use. Where a portion of an enactment which is to be repealed is cited by reference to the words, section numbers, etc, with which it begins and ends, this reference is prima facie inclusive. In modern Acts it is usual, where the number of repeals is considerable, to set them out in a columnar Repeal Schedule."

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Again, Bennion on Statutory Interpretation - A Code (3rd ed. 1997) S.85 at p. 221, reads as follows:-

> "To 'repeal' an Act is to cause it to cease to be a part of the corpus juris or body of law. To 'repeal' an enactment is to cause it to cease to be in law a part of the Act containing it."

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> "A repeal may be express or implied."
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> "The repeal of an enactment constitutes an amendment of the Act containing it."

And then later:-

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> "A repeal may be made textually, naming the repealed enactment.
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> Or the repeal may be made by indirect express provision..."
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> For example by such a phrase as-
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> > "Any other enactments inconsistent with this Act shall be repealed."

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No contemporary support is to be found outside the words of S.4(1) itself in this matter for a finding that the States intended a partial or total repeal of S.8 of the Act of 1911. In this jurisdiction it is permissible to refer to travaux préparatoires in the interpretation of a Law. We were provided with a copy of the Report of the States Accident Law Reform Committee which was contained in Billet D'Etat II of 1972 which preceded the Law of 1979, and found therein no reference to the Act of 1911 or its subject matter. Indeed, the stated objective appears to have been to bring the law in this Island into line with that in England.

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In these circumstances the Court can only find that there has been an express repeal if it is satisfied that the words used can have no other meaning. On that approach the Court would have to be driven to find that such a repeal was provided for despite the consequent departure from treaty obligations undertaken by the Crown and owed by this Island as a dependent territory. Reverting to the words in S.4(1) and in particular the words comprised in the phrase "Notwithstanding the provisions of any enactment or any rule of law...", these do not in my judgment constitute words of repeal, but rather are capable themselves of being no more than a recognition of the continued existence of the enactments and laws in question, and I so interpret the provision. Accordingly, I find that there was no such express repeal as was contended for.

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I turn therefore to consider whether there was an implied repeal of S.8 of the Act of 1911 by S.4(1) of the Law of 1979.

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The leading authority on repeal by implication is the old case of Kutner v. Phillips (1891) 2 QB 267, a decision of the Divisional Court whereby the jurisdiction conferred on the City of London Court over civil suits over persons who had employment in the City but did not reside or carry on business there themselves, had not been taken away by an implied repeal unsuccessfully alleged to have been effected by the County Courts Act of 1888.

B While the result turned on the terms of the two enactments in question, A.L. Smith, LJ, in the Divisional Court expressed, at 271, the principles to be applied, in terms which have not since been doubted:_

> "It is admitted on the part of the Applicant that there has been no express repeal of this section; but it is argued that, by reason of the legislation which has since taken place, and especially by reason of the provisions of the County Courts Act 1888, it has been repealed by implication. Now, a repeal by implication is only effected when the provisions of a later
> C enactment are so inconsistent with or repugnant to the provisions of an earlier one, that the two cannot stand together, in which case the maxim 'Leges posteriores contrarias abrogant' applies. Unless two Acts are so plainly repugnant to each other, that effect cannot be given to both at the same time, a repeal will not be implied, and special Acts are not repealed by general Acts unless there is some express reference to the previous legislation or unless there is a necessary inconsistency in the two Acts standing together: Thorpe v. Adams (LR 6 CP 125). Lord Coke in Gregory's case (6 Rep. 19(b)) lays it down 'that a later statute in
> D the affirmative shall not take away a former Act, and eo potior if the former be particular and the latter be general.'"

Thus too Halsbury's Laws of England (4th ed. re-issue) Vol.44(1) para.1299 reads as follows:-

> "An intention to repeal an Act or enactment may be inferred from the nature of the provision made by the later enactment. Repeal by implication cannot be prohibited, but
> E such an implication is found by the Courts with reluctance because the precision of modern drafting means the necessary repeals are usually effected expressly.
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> The rule is, therefore, that one provision repeals another by implication if, but only if, it is so inconsistent with or repugnant to that other that the two are incapable of standing together."

Para. 1300 follows, and reads:-

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> "It is difficult to imply a repeal where the earlier enactment is particular and the later general ... If Parliament had considered all the circumstances of, and made special provision for, a particular case, the presumption is that a subsequent enactment of a purely general character would not have been intended to interfere with that provision ... The special provision stands as an exceptional proviso upon the general."

G Similarly, Bennion (op. cit.) at p.226 cites the following passage from the speech of the Earl of Selbourne, LC, in Seward v. The Vera Cruz (1884) 10 AC 59, at 68 :-

> "... where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects expressly dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so." A

Our attention has been drawn, in addition, to two authorities in which the Courts in England have on the one hand considered the effect of the Act of 1911 itself on earlier legislation and on the other hand the effect on the Act of 1911 on later legislation.

First, in The Caliph (1912) P 213 the Court held that the provisions of S.8 of the Act of 1911 had overridden the terms of the Fatal Accidents Act 1846, which provided for a twelve month limitation period in the case of claims for damages for loss of life. B

The judgment was largely directed to the issue of whether S.8 was applicable to a Fatal Accidents Act claim at all. No reference was made in that judgment to the principles applicable to repeals by implication. However in my view the judgment can be interpreted as a preference for the particular over the general. C

This decision was approved by the Court of Appeal in The Alnwick (1965) P 357. Since the decision in The Caliph the period of limitation under the Fatal Accidents Act 1846 had been varied to one of three years from the date when the Cause of Action arose by virtue of the Law Reform (Limitation of Actions) Act 1954 S.3; while this appears on the face of it to have been to the benefit of a Plaintiff there was a substantial difference in that in the case of the Law Reform Act period there was no discretion or power as matters then stood further to extend the period whereas in the case of the Act of 1911 there was the proviso as mentioned above. The Court held that the Act of 1954 did not affect S.8 and went on to extend time under the proviso; that extension being by majority. No reference was made to Kutner v. Phillips (above) in the judgment of Sellers, LJ, but at 375 he said:- D

> "It has been submitted that the three year period of the Act of 1954 should now apply. But in my view, the alteration in the general law by the Act of 1954 cannot alter the construction of S.8 of the Act of 1911, however much more favourable it may be to a claimant." E

Thus, we can find a comparatively recent authority bearing on the Act of 1911 which preferred its terms to those of a more general Act.

Neither the phraseology used in the two provisions in question nor the surrounding circumstances lead me to the conclusion that the later of the two provisions is to be treated as so inconsistent with or repugnant to the earlier one as to constitute an implied repeal. The language is different and the basis upon which I have held that the express terms are to be interpreted is itself inconsistent with any such conclusion as is sought by the Appellants in relation to implication. F

Reference has already been made to the terms of the treaty obligations undertaken by the Crown and owed (inter alia) by the Bailiwick of Guernsey and to the recognition of those obligations in the title of and recitals to the Act of 1911. To the preference of the particular act of legislation over the general, is further to be added the presumption that the legislature (in this case the States) does not intend to act in breach of public international law. G

The Court was referred to the following passage from Bennion (op. cit.), at p.631, which I adopt as part of this judgment:-

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> "...There is a prima facie presumption that Parliament does not intend to act in breach of [public] international law, including therein specific treaty obligations; and if one of the meanings that can reasonably be attributed to the legislation is consonant with the treaty obligations and another or others are not, the meaning which is so consonant is to be preferred." (Saloman v. Customs and Excise Comrs (1967) 2 QB 116, per Diplock LJ at 143).

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An intention to bring about the breach of treaty obligations owed by the Bailiwick is something which there is no reason to impute to the States in this matter.

For all these reasons I would hold that there was neither an express nor an implied repeal of S.8 of the Act of 1911, which I find remains in force in this Island.

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Accordingly, this appeal, in my view, is to be allowed and the action will be remitted to the Royal Court for the determination of all outstanding issues.

R.D. HARMAN, QC: I agree with the judgment which has been given by Mr. Collins and I have nothing to add.

LORD CARLISLE: I also agree with the judgment that has been given and I have nothing to add.

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ADVOCATE COLLAS: I would ask for costs in respect of this appeal and in respect of the argument on the Exception and in the Court below.

ADVOCATE WESSELS: I can't resist that, provided the costs below are limited to the costs of this issue, the costs of the proviso arguments of course haven't been determined yet.

ADVOCATE COLLAS: I would agree with that, sir.

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THE PRESIDENT: Yes, so be it. Well then the Appellant shall have the costs of the appeal and the costs relative to this issue under the Exception de Fond in the Court below.

ADVOCATE COLLAS: I'm obliged, sir.

Appeal allowed and action remitted to Royal Court

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