

**CLAIMS RELATING TO CARGO OR PASSENGER ON BOARD
AND CONTRACT OF AFFREIGHTMENT**

The Admiralty jurisdiction of the High Court in respect of cargo claims, passenger on board and contracts of affreightment is statutory. Section 4 (1) (f) of the Admiralty Act (2017) deals with the above subject maritime claims, agreement relating to the carriage of goods or passengers on board a vessel, whether contained in a charter party or otherwise.

The High Court has Admiralty jurisdiction and jurisdiction in relation to the carriage of goods was first acquired by the Admiralty Court under the Admiralty Court Act, 1861. The Act of 1861 gave jurisdiction to the Court over claims by the owner, consignee or assignee of the bill of lading of any goods carried by a ship into any port in India for damage caused by negligence or for any breach of contract or breach of duty, unless at the institution of the cause the owner or part owner of the ship was domiciled in India. The jurisdiction which the Court now exercises has thus been extended. Under the Act of 1861 the right to bring an Admiralty action was limited to owners of cargo, but now there appears to be no reason why a ship-owner, provided that he is not domiciled in India, should not bring an Admiralty action against cargo owners, although the latter are domiciled in India; The only express limitation upon this exercise of jurisdiction in rem in claims relating to the carriage of goods is now the proviso that no owner or part owner of the ship shall on the institution of the suit be domiciled in India. The claim must be in respect of goods actually shipped on board the vessel which is made subject to proceedings in rem. Proceedings in rem can only be instituted against the ship in which such goods have actually been carried. Upon the same principle it would seem that a claim relating to the cargo or passenger on board or contract of affreightment is only capable of being enforced against the ship to which such agreement relates. The language of

the section does not, however, expressly impose any such limitation, but leaves a plaintiff free to enforce in proceedings in rem a claim relating to an agreement for the hire of a ship, or carriage of goods in a ship, against a ship other than that to which the agreement relates or in which the goods were carried, belonging to the same owner.

A time or voyage charterer's involvement in cargo claims can arise in two different ways: either directly or indirectly. By directly we mean that the charterer incurs the liability directly to the cargo owner, receiver or insurer. By indirectly we mean that the charterer incurs liability to another party, often the shipowner, who has first incurred liability, under a separate contract, to the cargo owner, receiver or insurer. Just because the claim has not been made against the charterer in the first place does not necessarily mean that the time or voyage charterer will not face a claim. Nor does it mean that the charterer will be free from any or all ultimate liability.

The jurisdiction is, however, no longer confined to claims relating to goods "carried into any port in India in any ship", to include claims in respect of any breach of contract. The right to proceed is no longer confined to the owner, consignee or assignee of the bill of lading and therefore it would seem that the limitation of the jurisdiction to claims where actual damage to goods has been sustained, or a breach of contract taken place in relation to them

A claim in personam by cargo owners against the owners of the carrying ship who were domiciled in India are not within the jurisdiction of the Admiralty Court. Any action in personam may now be brought in the Admiralty Court. The jurisdiction in actions in rem has not, however, been affected in respect of cargo claims. There is, therefore, no jurisdiction to entertain an action in rem in which the owner of the ship, whether plaintiff or defendant, is domiciled in India. The remedy applies to foreign ships as well as to Indian ships, its objects being to give a practicable remedy, where formerly in the great majority of cases there was no available process in consequence of the

shipowner being out of the jurisdiction. "Many foreign ships" "came into this country, and did not deliver the goods according to the bill of lading. The owners and consignees of cargo then suffered great loss, and had no practicable remedy; for though the shipowner, if in India, might have been sued for breach of contract, in the very great majority of cases that remedy was wholly unavailable. It appears, too, that in some cases, if not nearly in all, the owner of a Indian ship carrying cargo to a foreign country was liable to have his ship there seized for any breach of his contract as carrier.

As remedy depends upon the place where the owner of the ship is domiciled at the time of the institution of the suit, it is clear that it was not intended that a plaintiff having a claim under the section should have a maritime lien; for a maritime lien accrues from the instant of the circumstances creating it, and not from the date of the intervention of the Court. The claim of the plaintiff in cases of damage to cargo or breaches of contract therefore accrues only upon the institution of the suit, and is subject to claims subsisting on the ship at the time of the institution of the suit.