Perils of the sea in contracts of affreightment

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Under common law, carriers were liable for loss or damage to goods in their custody notwithstanding the absence of fault on their part . This led to carriers inaugurating a wide range of exonerative clauses into their bills of lading. Today, the applicable rules are The Hague/ Visby Rules representing a middle settlement about the allocation of risk of damage to cargo.

By Article IV, rule 2(c) of the rules "Perils of the sea" operate as a one of the legitimate defenses of carriers in the event of loss or damage to cargo.

In the case of Hamilton Fraser & Co. v Pandorf, cargo of rice was damaged by seawater which was let in through a pipe damaged by rats. The charterparty and bills of lading under which the cargo had been shipped provided the ship-owners with exemption from loss by "perils of the seas". It was held that damage done by seawater is a peril of the sea. Lord Herschell reiterated his views on the interpretation of the phrase "perils of the sea" in The Xantho . Concurring with the views expressed in Laveroni v Drury that injury done to a vessel or its cargo by rats is not damage by perils of the sea, he endorsed the dictum of Pollock C.B in that very case suggesting that incursion of water through a hole made by rats on a ship will be a case of sea damage.

Conclusion

What constitutes a "peril of the sea" is not defined. Four major Common Law nations interpreted how the phrase operates as an exclusion clause for carriers. The United States of America requires that the events which give rise to perils of the sea be extraordinary and irresistible as well as unforeseeable . Australian Law departs from its common law precedents and does not require the peril to be unforeseen .The Law in the United Kingdom and Canada are similar and the defendant must show that the damage is unforeseen. Each case bordering on the phrase "perils of the sea" will be decided on its merits.

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