

Privy Council Appeal No. 7 of 1964

Overseas Tankship (U.K.) Limited – – – – – *Appellants*

v.

**The Miller Steamship Co. Pty. Limited and another (and
Cross-appeal consolidated)** – – – – – *Respondents*

FROM

THE SUPREME COURT OF NEW SOUTH WALES

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 25TH MAY 1966.

Present at the Hearing :

LORD REID

LORD MORRIS OF BORTH-Y-GEST

LORD PEARCE

LORD WILBERFORCE

LORD PEARSON

[Delivered by LORD REID]

This is an appeal from a judgment of Walsh J. dated 10th October 1963 in the Supreme Court of New South Wales in commercial cases by which he awarded to the respondents sums of £80,000 and £1,000 in respect of damage from fire sustained by their vessels "Corrimal" and "Audrey D" on 1st November 1951. These vessels were then at Sheerlegs Wharf, Morts Bay, in Sydney Harbour undergoing repairs. The appellant was charterer by demise of a vessel, the "Wagon Mound", which in the early hours of 30th October 1951 had been taking in bunkering oil from Caltex Wharf not far from Sheerlegs Wharf. By reason of carelessness of the "Wagon Mound" engineers a large quantity of this oil overflowed from the "Wagon Mound" on to the surface of the water. Some hours later much of the oil had drifted to and accumulated round Sheerlegs Wharf and the respondents' vessels. About 2 p.m. on 1st November this oil was set alight: the fire spread rapidly and caused extensive damage to the Wharf and to the respondents' vessels.

An action was raised against the present appellant by the owners of Sheerlegs Wharf on the ground of negligence. On appeal to the Board it was held that the plaintiffs were not entitled to recover on the ground that it was not foreseeable that such oil on the surface of the water could be set alight (*Overseas Tankship (U.K.) Ltd. v. Morts Dock and Engineering Co.* [1961] A.C. 388). Their Lordships will refer to this case as the *Wagon Mound No. 1*. The issue of nuisance was also raised but their Lordships did not deal with it: they remitted this issue to the Supreme Court and their Lordships now understand that the matter was not pursued there in that case.

In the present case the respondents sue alternatively in nuisance and in negligence. Walsh J. had found in their favour in nuisance but against them in negligence. Before their Lordships the appellant appeals against his decision on nuisance and the respondents appeal against his decision on negligence.

Their Lordships are indebted to that learned judge for the full and careful survey of the evidence which is set out in his judgment ([1963] 1 Lloyd's Rep. 402). Few of his findings of fact have been attacked, and their Lordships do not find it necessary to set out or deal with the evidence at any length. But it is desirable to give some explanation of how the fire started before setting out the learned judge's findings.

In the course of repairing the respondents' vessels the Morts Dock Co., the owners of Sheerlegs Wharf, were carrying out oxy-acetylene welding and cutting. This work was apt to cause pieces or drops of hot metal to fly off and fall in the sea. So when their manager arrived on the morning of 30th October and saw the thick scum of oil round the Wharf he was apprehensive of fire danger and he stopped the work while he took advice. He consulted the manager of Caltex Wharf and after some further consultation he was assured that he was safe to proceed: so he did so, and the repair work was carried on normally until the fire broke out on 1st November. Oil of this character with a flash point of 170°F. is extremely difficult to ignite in the open. But we now know that that is not impossible. There is no certainty about how this oil was set alight, but the most probable explanation, accepted by Walsh J., is that there was floating in the oil-covered water some object supporting a piece of inflammable material, and that a hot piece of metal fell on it when it burned for a sufficient time to ignite the surrounding oil.

The findings of the learned trial judge are as follows:--

"(1) Reasonable people in the position of the officers of the "Wagon Mound" would regard furnace oil as very difficult to ignite upon water.

(2) Their personal experience would probably have been that this had very rarely happened.

(3) If they had given attention to the risk of fire from the spillage, they would have regarded it as a possibility, but one which could become an actuality only in very exceptional circumstances.

(4) They would have considered the chances of the required exceptional circumstances happening whilst the oil remained spread on the harbour waters, as being remote.

(5) I find that the occurrence of damage to the plaintiffs' property as a result of the spillage, was not reasonably foreseeable by those for whose acts the defendant would be responsible.

(6) I find that the spillage of oil was brought about by the careless conduct of persons for whose acts the defendant would be responsible.

(7) I find that the spillage of oil was a cause of damage to the property of each of the plaintiffs.

(8) Having regard to those findings, and because of finding (5), I hold that the claim of each of the plaintiffs, framed in negligence, fails."

Having made these findings Walsh J. went on to consider the case in nuisance. There is no doubt that the carelessness of the appellant's servants in letting this oil overflow did create a public nuisance by polluting the waters of Sydney Harbour. And also there can be no doubt that anyone who suffered special damage from that pollution would have had an action against the appellants. But the special damage sustained by the respondent was caused not by pollution but by fire. So, having held in finding (5) that risk of fire was not reasonably foreseeable, Walsh J. had to consider whether foreseeability has any place in the determination of liability for damage caused by nuisance. He made an extensive survey of the case law and said that the principles which he found there "suggest that a plaintiff may set up a case depending upon the following steps. The defendant has committed a wrongful act in that it has created a public nuisance by polluting the harbour waters with oil. As a result of the presence of that nuisance (*i.e.*, of the oil) the

plaintiff has suffered damage over and above that suffered by others. This gives the plaintiff an action subject only to proof that there is the requisite relationship between the presence of that nuisance and the injury so that it can be said that the injury suffered was direct. It matters not that the injury was different in kind from a fouling of the ship by the polluted waters." Then, coming to the words used by the judges in numerous cases of nuisance he said that "by and large the judgments are not expressed in terms of the concept of foreseeability. The term used again and again is 'direct'. It is true that other expressions are also used, but one does not find in express terms any testing of the matter by what the defendant might have contemplated or might have foreseen." And later he added "I do not find in the case law on nuisance, up to the time of the Wagon Mound decision, any authority for the view that liability depends on foreseeability."

Their Lordships must now make their own examination of the case law. They find the most striking feature to be the variety of words used: and that is not very surprising because in the great majority of cases the facts were such that it made no difference whether the damage was said to be the direct or the natural or the probable or foreseeable result of the nuisance. The word "natural" is found very often and it is peculiarly ambiguous. It can and often does mean a result which one would naturally expect, *i.e.*, which would not be surprising: or it can mean the result at the end of a chain of causation unbroken by any conscious act, the result produced by so-called natural laws however surprising or even unforeseeable in the particular case. Another word frequently used is "probable". It is used with various shades of meaning. Sometimes it appears to mean more probable than not, sometimes it appears to include events likely but not very likely to occur, sometimes it has a still wider meaning and refers to events the chance of which is anything more than a bare possibility, and sometimes, when used in conjunction with other adjectives, it appears to serve no purpose beyond rounding off a phrase.

Their Lordships must first refer to a number of cases on which Walsh J. relied because they require that the damage suffered by the plaintiff must be the direct or immediate result of the nuisance (generally obstruction of a highway), and they make no reference to foreseeability or probability. But that is because they were dealing with quite a different matter from measure of damages. "By the Common Law of England a person guilty of a public nuisance might be indicted: but, if injury resulted to a private individual, other and greater than that which was common to all The Queen's subjects, the person injured had his remedy by action" (per Brett J. in *Benjamin v. Storr* L.R. 9 C.P. 400 at p. 406). So the first step is to decide whether the plaintiff has suffered what may for brevity be called special damage. The authorities on this matter are numerous and exceedingly difficult to reconcile. But one thing is clear. There have been excluded from the category of special damage many cases where the damage suffered by the plaintiff was clearly caused by the nuisance: it was not only foreseeable but probable and indeed the inevitable result of the nuisance—the obstruction by the defendant of a highway giving access to the plaintiffs' premises. The words direct and immediate have often been used in determining whether the damage caused by the nuisance is special damage. *Benjamin v. Storr* (*cit. sup.*) affords a good example. The defendants' vans were constantly standing in the street outside the plaintiff's coffee house. They intercepted the light to his windows so that he had to burn gas nearly all day, they obstructed access by his customers, and the stench from the horses was highly objectionable. The damage caused to the plaintiff by this obstruction of the highway was obvious, but that was not enough. Brett J. said "It is not enough for him to shew that he suffers the same inconvenience in the use of the highway as other people do." Then he cited two cases in which the plaintiffs, who had clearly suffered damage as a result of obstruction, failed because they were unable to shew that they had suffered any injury other and different from that which was

common to all the rest of the public. And then he said "other cases shew that the injury to the individual must be direct and not a mere consequential injury: as where one way is obstructed but another (though possibly a less convenient one) is left open: in such a case the private and particular injury has been held not to be sufficiently direct to give a cause of action". But he held that in the case before him there was "a particular, a direct, and a substantial damage".

Such cases have nothing to do with measure of damages: they are dealing with the entirely different question whether the damage caused to the plaintiff by the nuisance was other and different from the damage caused by the nuisance to the rest of the public. When the word direct is used in determining that question, its meaning or connotation appears to be narrower than when it is used in determining whether damage is too remote, so their Lordships do not propose to deal further with cases determining what is and what is not special damage. No one denies that the respondents have suffered special damage in this case within the meaning of these authorities. The question is whether they can recover notwithstanding the finding that it was not foreseeable.

Of the large number of cases cited in argument there were few in which there was separate consideration of the proper measure of damages for nuisance. Many of the cases cited deal with the measure of damages for breach of contract and their Lordships will later explain why they do not propose to examine these cases. And a larger number were cases based purely on negligence in which there was no element of nuisance. Their Lordships do not intend to examine these cases in detail. It has now been established by the *Wagon Mound No. 1* and by *Hughes v. Lord Advocate* [1963] A.C. 837 that in such cases damages can only be recovered if the injury complained of was not only caused by the alleged negligence but was also an injury of a class or character foreseeable as a possible result of it. So it would serve no useful purpose in this case to examine the grounds of judgment in earlier cases of negligence. In so far as they are ambiguous they must now be interpreted in light of these two cases: in so far as they exclude foreseeability they must be taken to be disapproved: and in so far as they take account of foreseeability they do no more than amplify the grounds of judgment in these two cases. The respondents can only succeed on this branch of the case by distinguishing nuisance from negligence either because the authorities indicate that foreseeability is irrelevant in nuisance or because on principle it ought to be held to be irrelevant.

In *Sharp v. Powell* L.R. 7 C.P. 253 the defendant's servant washed his van in a public street which was an offence. Owing to a severe frost and a block in a drain the water did not get away but spread over the street some distance away and became a sheet of ice on which the plaintiff's horse slipped and was injured. The case was laid in nuisance. Bovill C. J. decided against the plaintiff because "the defendant could not reasonably be expected to foresee that the water would accumulate and freeze at the spot where the accident happened". Keating J. said "The damage in question, not being one which the defendant could fairly be expected to anticipate as likely to ensue from his act, is in my judgment too remote." And the judgment of Grove J. was to the same effect. It may be that to-day the defendant's servant would be expected to be more wide awake and observant but given the finding of fact regarding foreseeability the rest followed. Counsel for the appellant argued that this was really a case of negligence. The relevance of the case to the present issue is that no one concerned thought that there was any difference in this respect between nuisance and negligence.

The close relation between nuisance and negligence is shown by *Pearson v. Cox* 2 C.P.D. 369. Workmen were working in a house. A "straightedge" was balanced on a plank: one of the men shook it and the tool fell on the plaintiff who was passing along the street. The case was laid in negligence but Bramwell L. J. dealt with it as a case of nuisance. The ground of judgment was expressed by Brett L. J.: "The

accident was highly improbable and a man need not guard against highly improbable accidents." Again it may be that a higher standard of care is required to-day.

In *Clark v. Chambers* 3 Q.B.D. 327 an adjoining occupier placed chevaux de frise in the street to restrict passage. Someone moved one of these barriers on to the pavement and at night a foot passenger came in contact with it and was injured. Obstructing the street was clearly a nuisance. The main controversy was whether the intervention of the stranger moving the barrier was novus actus interveniens but the plaintiff succeeded. Again there was no suggestion of any difference between negligence and nuisance. Cockburn C. J. doubted whether foreseeability came in at all but held that if it did this was foreseeable.

In *Harrold v. Watney* [1898] 2Q.B. 320 a child climbed on to a defective fence beside a road. It gave way and the child was injured. The fence was held to be a nuisance and the action succeeded. Vaughan Williams L. J. said "When asking oneself if the nuisance was the cause of the accident one gets a test in this way: ought what the child did to have been present to the mind of the person who created the nuisance as a probable result of his act?"

The only case cited where there is an express statement that liability does not depend on foreseeability is *Farrell v. Mowlem* [1954] 1 Lloyd's Rep. 437 where the defendant had without justification laid a pipe across a pavement and the plaintiff tripped over it and was injured. Devlin J. held this to be a nuisance. He said "I think the law still is that any person who actually creates a nuisance is liable for it and for the consequences which flow from it whether he is negligent or not." That is quite true, but then he added "It is no answer to say I laid the pipe across the pavement but I did it quite carefully and I did not foresee and perhaps a reasonable man would not have foreseen that anybody would be likely to trip over it." That case was before the *Wagon Mound No. 1* and it may be that Lord Devlin thought that the rule was the same in negligence: or it may be that he thought that there was a different rule for nuisance. He cites no authority.

In their Lordships' judgment the cases point strongly to there being no difference as to the measure of damages between nuisance and negligence but they are not conclusive. So it is desirable to consider the question of principle.

The appellant's first argument was that damages depend on the same principles throughout the law of tort and contract. This was stated emphatically by Lord Esher in *The Notting Hill* 9 P.D. 105 and in *The Argentino* 13 P.D. 191 and it has often been repeated. But the matter has not been fully investigated recently. There has in recent times been much development of the law of tort and developments in the law of contract may not have proceeded on parallel lines. To give but one example, it is not obvious that the grounds of decision of the House of Lords in *Hughes v. Lord Advocate* are consistent with the first rule in *Hadley v. Baxendale* 9 Ex. 341 as that rule is commonly interpreted. But it is unnecessary to pursue this question in this case and therefore their Lordships do not intend to examine cases arising out of breach of contract.

The next argument was that at all events the measure of damages is the same throughout the law of tort. But there are many special features in various kinds of tort, and again their Lordships do not find it necessary to make the extensive investigations which would be required before reaching a conclusion on this matter.

Comparing nuisance with negligence the main argument for the respondent was that in negligence foreseeability is an essential element in determining liability and therefore it is logical that foreseeability should

also be an essential element in determining the amount of damages: but negligence is not an essential element in determining liability for nuisance and therefore it is illogical to bring in foreseeability when determining the amount of damages. It is quite true that negligence is not an essential element in nuisance. Nuisance is a term used to cover a wide variety of tortious acts or omissions and in many negligence in the narrow sense is not essential. An occupier may incur liability for the emission of noxious fumes or noise although he has used the utmost care in building and using his premises. The amount of fumes or noise which he can lawfully emit is a question of degree and he or his advisers may have miscalculated what can be justified. Or he may deliberately obstruct the highway adjoining his premises to a greater degree than is permissible hoping that no one will object. On the other hand the emission of fumes or noise or the obstruction of the adjoining highway may often be the result of pure negligence on his part: there are many cases (*e.g.*, *Dollman v. Hillman* [1941] 1. All E.R. 355) where precisely the same facts will establish liability both in nuisance and in negligence. And although negligence may not be necessary, fault of some kind is almost always necessary and fault generally involves foreseeability, *e.g.*, in cases like *Sedleigh-Denfield v. O'Callaghan* [1940] A.C. 880 the fault is in failing to abate a nuisance of the existence of which the defender is or ought to be aware as likely to cause damage to his neighbour. (Their Lordships express no opinion about cases like *Wringe v. Cohen* [1940] 1 K.B. 229 on which neither Counsel relied.) The present case is one of creating a danger to persons or property in navigable waters (equivalent to a highway) and there it is admitted that fault is essential—in this case the negligent discharge of the oil. “But how are we to determine whether a state of affairs in or near a highway is a danger? This depends I think on whether injury may reasonably be foreseen. If you take all the cases in the books you will find that if the state of affairs is such that injury may reasonably be anticipated to persons using the highway it is a public nuisance” (per Lord Denning M.R. in *Morton v. Wheeler* C.A. 31st January 1956). So in the class of nuisance which includes this case foreseeability is an essential element in determining liability.

It could not be right to discriminate between different cases of nuisance so as to make foreseeability a necessary element in determining damages in those cases where it is a necessary element in determining liability, but not in others. So the choice is between it being a necessary element in all cases of nuisance or in none. In their Lordships' judgment the similarities between nuisance and other forms of tort to which the *Wagon Mound No. 1* applies far outweigh any differences, and they must therefore hold that the judgment appealed from is wrong on this branch of the case. It is not sufficient that the injury suffered by the respondents' vessels was the direct result of the nuisance if that injury was in the relevant sense unforeseeable.

It is now necessary to turn to the respondents' submission that the trial Judge was wrong in holding that damage from fire was not reasonably foreseeable. In *Wagon Mound No. 1* the finding on which the Board proceeded was that of the trial Judge: “the defendant did not know and could not reasonably be expected to have known that [the oil] was capable of being set afire when spread on water”. In the present case the evidence led was substantially different from the evidence led in *Wagon Mound No. 1* and the findings of Walsh J. are significantly different. That is not due to there having been any failure by the plaintiffs in *Wagon Mound No. 1* in preparing and presenting their case. The plaintiffs there were no doubt embarrassed by a difficulty which does not affect the present plaintiffs. The outbreak of the fire was consequent on the act of the manager of the plaintiffs in *Wagon Mound No. 1* in resuming oxy-acetylene welding and cutting while the wharf was surrounded by this oil. So if the plaintiffs in the former case had set out to prove that it was foreseeable by the engineers of the *Wagon Mound* that this oil could be set alight, they might have had difficulty in parrying the reply that the

this must also have been foreseeable by their manager. Then there would have been contributory negligence and at that time contributory negligence was a complete defence in New South Wales.

The crucial finding of Walsh J. in this case is in finding 5: that the damage was "not reasonably foreseeable by those for whose acts the defendant would be responsible". That is not a primary finding of fact but an inference from the other findings, and it is clear from the learned Judge's judgment that in drawing this inference he was to a large extent influenced by his view of the law. The vital parts of the findings of fact which have already been set out in full are (1) that the officers of the *Wagon Mound* "would regard furnace oil as very difficult to ignite upon water"—not that they would regard this as impossible: (2) that their experience would probably have been "that this had very rarely happened"—not that they would never have heard of a case where it had happened, and (3) that they would have regarded it as a "possibility, but one which could become an actuality only in very exceptional circumstances"—not, as in *Wagon Mound No. 1*, that they could not reasonably be expected to have known that this oil was capable of being set afire when spread on water. The question which must now be determined is whether these differences between the findings in the two cases do or do not lead to different results in law.

In *Wagon Mound No. 1* the Board were not concerned with degrees of foreseeability because the finding was that the fire was not foreseeable at all. So Lord Simonds had no cause to amplify the statement that the "essential factor in determining liability is whether the damage is of such a kind as the reasonable man should have foreseen" (at p. 426). But here the findings show that some risk of fire would have been present to the mind of a reasonable man in the shoes of the ship's chief engineer. So the first question must be what is the precise meaning to be attached in this context to the words "foreseeable" and "reasonably foreseeable"

Before *Bolton v. Stone* [1951] A.C. 850 the cases had fallen into two classes: (1) those where, before the event, the risk of its happening would have been regarded as unreal either because the event would have been thought to be physically impossible or because the possibility of its happening would have been regarded as so fantastic or farfetched that no reasonable man would have paid any attention to it—"a mere possibility which would never occur to the mind of a reasonable man" (per Lord Dunedin in *Fardon v. Harcourt-Rivington* [1932] 146 L.T. 391)—or (2) those where there was a real and substantial risk or chance that something like the event which happens might occur, and then the reasonable man would have taken the steps necessary to eliminate the risk.

Bolton v. Stone posed a new problem. There a member of a visiting team drove a cricket ball out of the ground onto an unfrequented adjacent public road and it struck and severely injured a lady who happened to be standing in the road. That it might happen that a ball would be driven on to this road could not have been said to be a fantastic or far-fetched possibility: according to the evidence it had happened about six times in 28 years. And it could not have been said to be a far-fetched or fantastic possibility that such a ball would strike someone in the road: people did pass along the road from time to time. So it could not have been said that, on any ordinary meaning of the words, the fact that a ball might strike a person in the road was not foreseeable or reasonably foreseeable—it was plainly foreseeable. But the chance of its happening in the foreseeable future was infinitesimal. A mathematician given the data could have worked out that it was only likely to happen once in so many thousand years. The House of Lords held that the risk was so small that in the circumstances a reasonable man would have been justified in disregarding it and taking no steps to eliminate it.

But it does not follow that, no matter what the circumstances may be, it is justifiable to neglect a risk of such a small magnitude. A reasonable man would only neglect such a risk if he had some valid reason for doing so: *e.g.*, that it would involve considerable expense to eliminate the risk. He would weigh the risk against the difficulty of eliminating it. If the activity which caused the injury to Miss Stone had been an unlawful activity there can be little doubt but that *Bolton v. Stone* would have been decided differently. In their Lordships' judgment *Bolton v. Stone* did not alter the general principle that a person must be regarded as negligent if he does not take steps to eliminate a risk which he knows or ought to know is a real risk and not a mere possibility which would never influence the mind of a reasonable man. What that decision did was to recognise and give effect to the qualification that it is justifiable not to take steps to eliminate a real risk if it is small and if the circumstances are such that a reasonable man, careful of the safety of his neighbour, would think it right to neglect it.

In the present case there was no justification whatever for discharging the oil into Sydney Harbour. Not only was it an offence to do so but it involved considerable loss financially. If the ship's engineer had thought about the matter there could have been no question of balancing the advantages and disadvantages. From every point of view it was both his duty and his interest to stop the discharge immediately.

It follows that in their Lordships' view the only question is whether a reasonable man having the knowledge and experience to be expected of the chief engineer of the Wagon Mound would have known that there was a real risk of the oil on the water catching fire in some way: if it did, serious damage to ships or other property was not only foreseeable but very likely. Their Lordships do not dissent from the view of the trial Judge that the possibilities of damage "must be significant enough in a practical sense to require a reasonable man to guard against them" but they think that he may have misdirected himself in saying "there does seem to be a real practical difficulty, assuming that some risk of fire damage was foreseeable, but not a high one, in making a factual judgment as to whether this risk was sufficient to attract liability if damage should occur". In this difficult chapter of the law decisions are not infrequently taken to apply to circumstances far removed from the facts which gave rise to them and it would seem that here too much reliance has been placed on some observations in *Bolton v. Stone* and similar observations in other cases.

In their Lordships' view a properly qualified and alert chief engineer would have realised there was a real risk here and they do not understand Walsh J. to deny that. But he appears to have held that if a real risk can properly be described as remote it must then be held to be not reasonably foreseeable. That is a possible interpretation of some of the authorities. But this is still an open question and on principle their Lordships cannot accept this view. If a real risk is one which would occur to the mind of a reasonable man in the position of the defendant's servant and which he would not brush aside as far-fetched and if the criterion is to be what that reasonable man would have done in the circumstances, then surely he would not neglect such a risk if action to eliminate it presented no difficulty, involved no disadvantage, and required no expense.

In the present case the evidence shows that the discharge of so much oil on to the water must have taken a considerable time, and a vigilant ship's engineer would have noticed the discharge at an early stage. The findings show that he ought to have known that it is possible to ignite this kind of oil on water, and that the ship's engineer probably ought to have known that this had in fact happened before. The most that can be said to justify inaction is that he would have known that this could only happen in very exceptional circumstances. But that does not mean that a

reasonable man would dismiss such a risk from his mind and do nothing when it was so easy to prevent it. If it is clear that the reasonable man would have realised or foreseen and prevented the risk then it must follow that the appellants are liable in damages. The learned Judge found this a difficult case: he says that this matter is "one upon which different minds would come to different conclusions". Taking a rather different view of the law from that of the learned Judge, their Lordships must hold that the respondents are entitled to succeed on this issue.

The judgment appealed from is in the form of a verdict in favour of the respondents upon the claim based upon nuisance, a verdict in favour of the appellant on the claim based upon negligence, and a direction that judgment be entered for the respondents in the sums of £80,000 and £1,000 respectively. The result of their Lordships' findings is that the direction that judgment be entered for the respondents must stand but that the appeal against the verdict in favour of the respondents and the cross-appeal against the verdict in favour of the appellant must both be allowed.

Accordingly their Lordships will humbly advise Her Majesty that the appeal and the cross-appeal should be allowed and that the judgment for the respondents in the sums of £80,000 and £1,000 should be affirmed. The appellant must pay two-thirds of the respondents' costs in the appeal and cross-appeal.

In the Privy Council

OVERSEAS TANKSHIP (U.K.) LIMITED

v.

**THE MILLER STEAMSHIP Co. Pty. LIMITED
AND ANOTHER
(AND CROSS-APPEAL CONSOLIDATED)**

DELIVERED BY
LORD REID

