

**BP Australia Limited** - - - - - *Appellant*

v.

**Nabalco Pty. Limited** - - - - - *Respondent*

FROM

**THE SUPREME COURT OF NEW SOUTH WALES**

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REASONS FOR REPORT OF THE LORDS OF THE  
JUDICIAL COMMITTEE OF THE PRIVY COUNCIL  
DELIVERED THE 4TH JULY 1977

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*Present at the Hearing:*

LORD SIMON OF GLAISDALE  
LORD SALMON  
LORD RUSSELL OF KILLOWEN  
LORD KEITH OF KINKEL  
SIR RICHARD WILD

[*Delivered by* LORD RUSSELL OF KILLOWEN]

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This appeal concerns, and on the view formed by their Lordships concerns only, a question of construction of a contract between BP Australia Ltd. ("BPA") and Nabalco Pty. Ltd. ("Nabalco").

In the 1960's a project was launched for the mining of bauxite and also the processing of it to alumina in a rather remote part of the Northern Territory at Gove. It involved a joint venture between two companies, Gove Alumina Ltd. and Swiss Aluminium Australian Pty. Ltd., and agreement by them to sell bauxite and alumina to Swiss Aluminium Ltd.—a Swiss company, parent of the Australian company. Nabalco, jointly owned by the joint venturers, was manager of the project under a contract with the joint venturers. But for the purposes of the question now in issue the background of interests in the project is immaterial and Nabalco is to be regarded as principal.

For the purpose of carrying out the project at Gove Nabalco required supplies of (*inter alia*) super motor spirit, diesoleum, and furnace (fuel) oil. Furnace oil was in particular required for the processing of bauxite into alumina.

BPA is a company in the giant BP group. It is a wholly owned "grandson" subsidiary of BP Limited, a United Kingdom company.

On 11 June 1970 BPA entered into a ten year contract with Nabalco under which BPA were to supply and Nabalco to take, delivered to Gove by sea, Nabalco's requirements of the products mentioned. The product which has given rise to the dispute in this case is furnace oil.

Stated shortly the contract provided base prices per metric ton for the three products, and contained provisions for adjustments of base prices in various circumstances. Clause 9(C)(i) contained particular provision after the first five years for possible adjustment of base prices in the event of substantial increases in world F.O.B. values of (*inter alia*) furnace oil. Clause 9(C)(iii) contained different provision for possible adjustment of base prices in (*inter alia*) the event that BPA was only able to obtain the product from its then sources "on onerous terms". For various reasons the base price per metric ton of furnace oil had under the contract risen by the end of 1973 from approximately \$A9.4 per metric ton to approximately \$A14. At the beginning of 1974 the concerted actions of the oil producing countries OPEC produced a truly drastic increase in the amount which BPA had to pay for the furnace oil which it had to obtain in order to supply Nabalco. The schedule at p. 208 of Vol. I of the Record shows the cost to BPA per metric ton of its acquisition of furnace oil to fulfil its obligations to Nabalco, as moving from a shipment on 31 January 1974 at \$A14 to the next shipment on 15 March 1974 at nearly \$A40, which was equivalent to the world market price F.O.B. for furnace oil. Stated briefly the question of construction is whether this triggers Clause 9(C)(iii) as BPA contend: or whether, since this is a world market price, it cannot be an onerous term: or alternatively whether this is within Clause 9(C)(i) and therefore can have no effect in the first five years on basic prices.

Having thus displayed the outline of the problem of construction, it is necessary to note that supplies of furnace oil procured by BPA in order to fulfil its contract with Nabalco were procured from another of the BP group, a U.K. company, BP Trading Ltd. ("BPT"), the principal operating company of the BP group, a wholly owned subsidiary of BP Limited and in the BP family an "uncle" of BPA. BPT refined at Singapore crude obtained by it from the Persian Gulf and there supplied to BPA its requirements of furnace oil for the Nabalco contract. Bargaining between BPA and BPT was at arms length: the drastic increase in the cost to BPA of furnace oil was occasioned by the first really serious show of muscle by OPEC and the consequent increase in the cost to BPT of taking crude.

Their Lordships turn now to the terms of the BPA/Nabalco contract, so far as presently relevant. It was to continue for ten years from the first delivery of furnace oil by BPA into Nabalco's storage tanks at Gove. Clause 8 stated the basic price for (*inter alia*) furnace oil, subject to the other provisions of the contract. Clause 9 is side noted "Price Variations". Clause 9(A) deals with adjustments to base prices for motor spirit and diesoleum in relation to freight rates in terms somewhat similar to those in Clause 9(B), and need not be set out. Clause 9(B) is in the following terms—

"(B) Furnace Oil

Freight Rates—

Until the first day of January 1977 the said base prices per metric ton for Furnace Oil delivered hereunder shall be adjusted on the first day of July and January in each year by adding to or subtracting from it as the case may require the amount (converted to Australian currency per metric ton) by which the ocean freight rate effective on that day for the voyage Aden/Gove calculated from the assessment known as MR AFRA is above £(S)1.15.10 per long ton or is below £(S)1.1.6 per long ton.

- (a) On the first day of January 1977 the said base price per metric ton shall be adjusted by adding to or subtracting from it as the case may require the amount (converted to Australian

currency per metric ton) by which the average of the monthly assessments of the said MR AFRA freight rate for the twelve months period commencing on the first day of January 1976 shall be above or below £(S)1.8.8.

- (b) After the first day of January 1977 the said base price per metric ton (adjusted as provided in the preceding paragraph (a)) shall further be adjusted on the half yearly days aforesaid by adding to or subtracting from it as the case may require the amount (converted to Australian currency per metric ton) by which the said MR AFRA freight rate effective on that day is more than twenty-five per centum above or below the said average of the monthly freight rate assessments. Such basis for further adjusting the base price per metric ton shall remain effective for a period of five years from the first day of January 1977."

In summary therefore there is provision for adjustment of the base price every six months until 1 January 1977 insofar as the then effective Aden/Gove rate is above or below a bracket: on 1 January 1977 the adjustment then to be made will depend upon the extent to which the average rate during 1976 is above or below the stated figure: at six monthly intervals thereafter there is to be adjustment to the base price if and insofar as on the date in question the rate is more than 25% greater or more than 25% less than the 1976 average figure. It will be observed that inasmuch as in fact all furnace oil was shipped by BPA to Gove from Singapore and not from Aden this measure of adjustment of base price is quite artificial. MR AFRA rate assessments refer to "Main Route Average Freight Rate Assessment" published by the London Tanker Brokers' Panel six monthly. MR AFRA concerns larger tankships: GP AFRA, referred to in Clause 9(A), concerns smaller tankships. Clause 9(C) concerns all three of the stated products: it is in the following terms:

"(C) Super Motor Spirit, Diesoleum and Furnace Oil

(i) F.O.B. Values—

The Seller or the Buyer may (but not earlier than the expiration of five (5) years from the date of the first delivery of Furnace Oil hereunder or the first day of April 1977 whichever shall be the earlier) by notice in writing to the other notify the other that in the opinion of the party giving such notice the F.O.B. value of Super Motor Spirit, Diesoleum and/or Furnace Oil has substantially altered since the date hereof and upon the receipt of such notice and subject to production by the party giving such notice of reasonable evidence of such substantial alteration both parties will as soon as may be practicable confer together for the purpose of fixing a fresh base price for Super Motor Spirit, Diesoleum and Furnace Oil to be delivered hereunder. If such substantial alteration be reasonably established and within one (1) month after the giving of such notice the parties do not agree in writing upon the then existing base prices continuing to apply or upon fresh base prices then either party may by three (3) months' notice to the other but without prejudice to any then existing action or right of action by one against the other terminate this agreement as from the expiration of such last mentioned notice."

In summary subclause (i) empowered either party after the period stated to seek to take advantage in a particular manner of a substantial alteration in F.O.B. values of all or any of the three products. The machinery requisite for the operation of the subclause was (a) the party must form the opinion that such substantial alteration had taken place

(b) the party must give written notice of that opinion (c) the party must produce reasonable evidence of such alteration (d) the parties must as soon as practicable confer together for the purpose of fixing base prices. The parties may—but may not—agree in writing on base prices for the three products, either that there should be no change, or some change, or a combination of those. If they agree, then the base prices are laid down. If they do not agree on prices within one month after the notice is given, either party may give three months' written notice to determine the whole contract, such notice no doubt to be given within a reasonable time after the one month has expired. If neither party gave such notice of termination, the contract would continue at the existing base prices. Their Lordships observe that it was common ground that "F.O.B. value" was something which would be ascertainable, and was substantially equivalent to a world market price.

Subclause (ii) need not be set out: it provided for agreement (or arbitration) on a new index if the freight rate adjustments in 9(A) and 9(B) ceased to be workable by the disappearance of GP AFRA and/or MR AFRA.

Subclause (iii) is the provision at the heart of the dispute on construction: BPA contend that the drastic increase in world cost of crude and consequently as already stated of furnace oil to BPA came within this subclause, and that as a result of a notice by BPA and a (conditional) counter notice thereunder by Nabalco, the contract so far as concerns furnace oil came to an end in due course, with the result that BPA in any event could not be said to have committed the breach, for which the learned judge assessed the damages to Nabalco as over \$A20 million.

Subclause (iii) is in the following terms—

“(iii) Interruption to Seller's Sources of Supply—

If at any time due to circumstances beyond the Seller's control, the Seller is unable or able only on onerous terms to obtain supplies of crude petroleum and/or petroleum products from its present or then usual sources and by the present or then usual routes for such supplies, and if in consequence thereof the Seller incurs substantial additional costs in respect of the supply of Super Motor Spirit, Diesoleum and/or Furnace Oil deliverable hereunder then the Seller may give notice thereof to the Buyer and fix a revised base price per metric ton for supplies of such Super Motor Spirit, Diesoleum and/or Furnace Oil hereunder as is so affected and save as herein provided such revised base price or prices per metric ton shall become operative on the day stated in the notice being a date not less than three (3) months after the date of the notice. If any such revised base price per metric ton shall be unacceptable to the Buyer then within one month after the receipt of the said notice the buyer shall give three months' notice in writing to the Seller to terminate upon the expiration of such notice its obligation to purchase under this agreement the product or products the revised base price or prices of which is or are unacceptable in which event the Seller will until the date upon which such obligation terminates supply to the Buyer the BP product or products in respect of which the Seller shall have given notice of termination as aforesaid at the base price per metric ton effective immediately prior to the date of the said first mentioned notice subject to adjustment thereafter and in accordance with the terms and conditions of this agreement other than this clause.”

In summary this subclause deals with a number of situations. First: if BPA is unable to obtain supplies from its present or then usual sources and in consequence of that inability BPA incurs substantial additional costs in respect of the supply of all or any of the three products under the Nabalco contract. Second: if BPA continues able to obtain supplies from its present or then usual sources but not by its present or then usual routes, and in consequence of that partial inability BPA incurs substantial additional costs in respect of the supply etc. etc. Third: if BPA continues able to obtain supplies from its present or usual sources but "only on onerous terms" and in consequence of those onerous terms BPA incurs substantial additional costs in respect of the supply etc. etc. If any of those events occur "at any time" BPA may give notice thereof to Nabalco and fix unilaterally a new base price for the product affected by the consequential increase in cost to BPA in respect of the supply to Nabalco under the BPA/Nabalco contract. There is nothing—except where relevant commercial good sense—which requires the revised base price to be related to the current base price and the amount of the consequential substantial additional costs incurred by BPA. If no further step is taken the revised base price for the product becomes operative on the day stated in BPA's notice, being not less than three months after the notice. But if Nabalco does not accept the revised base price it can within one month of BPA's notice terminate the contract insofar as it concerns the particular product by giving three months' notice of such termination: in which case the revised base price does not come into operation.

Before going to other parts of the Nabalco contract it is convenient to set out the notice which BPA purported to give under subclause (iii). This, which was received by Nabalco on 25 March 1974, was in the following terms:

*"Supply Agreement dated 11th June, 1970 for Super Motor Spirit, Diesoleum and Furnace Oil*

Pursuant to Clause 9 (C) (iii) of the above Agreement BP Australia Limited (hereinafter called 'BP') hereby gives notice to Nabalco Pty. Ltd. that:—

- (i) Due to circumstances beyond BP's control BP is able only on onerous terms to obtain supplies of crude Petroleum and/or petroleum products from BP's present or now usual sources and by the present or now usual routes for such supplies.

Owing to the actions of the OPEC countries which are entirely beyond BP's control BP is only able to obtain supplies on the following terms: the cost to BP of Furnace Oil (excluding freight) rose between October, 1973 and December, 1973 by A\$3.64 per metric ton and remained at about that increased level of cost until the shipment for which loading commenced at Singapore on 31st January, 1974. Supplies of this product loaded or to be loaded in March, 1974 are available from BP's now usual sources only at a price increased by approximately A\$24.92 per metric ton (excluding freight) beyond the price paid for the said 31st January shipment. It is expected that the price will not fall below the price as so increased.

- (ii) In consequence of the foregoing BP is incurring substantial additional costs as detailed above in respect of the supply of Furnace Oil deliverable under the above Agreement.
- (iii) BP hereby fixes a revised base price of A\$54.44 per metric ton for the supply of Furnace Oil under the above Agreement.

- (iv) The said revised base price per metric ton shall become operative on the 26th day of June, 1974.”

As was remarked by the learned judge this vastly increased base price would, having regard to the increase in the cost to BPA of furnace oil, have resulted only in approximately a break even situation for BPA on furnace oil.

On 24 April 1974 Nabalco served a counter notice denying that circumstances had arisen which triggered subclause (iii) but, should it be wrong on that point, giving three months' notice to determine the contract in respect of furnace oil. BPA continued to supply furnace oil under the contract at the pre-revision base price until the expiry of Nabalco's three months' notice, and accordingly if, as their Lordships consider, circumstances had arisen which triggered subclause (iii) BPA has not breached the contract and Nabalco's claim for damages fails *in limine*.

Returning to the contract, Clause 9 (C) (iv), still under the side heading of price variations in relation to all three of the named products, was in the following terms:

“(iv) Currency Revaluation

- (a) If during the continuance hereof the parity of the Australian dollar as notified as at the date hereof to the International Monetary Fund is changed by five (5) percent or more, the parties shall promptly consult together (but without reference to arbitration) to determine appropriate and equitable revision of the base prices payable hereunder (by not more than the extent of the change in the valuation in question).
- (b) If agreement is not reached between the parties within thirty (30) days of the date of such change in valuation, the party wishing the greater increase in the case of devaluation—or decrease in the case of revaluation upwards—in the base prices may terminate this agreement upon the expiration of thirty (30) days' notice in writing to the other.”

This subclause does not call for any summary or particular comment: it is a provision of which either party may seek to take advantage, as in the case of subclause (i), and in the event of failure to agree the whole agreement may be terminated by the party who seeks to take advantage of it. It was marginally significant in relation to an argument by BPA that subclause (i) could only operate once, a view which does not commend itself to their Lordships: but since it was common ground that the solution to the present problem was not dependent upon the validity or invalidity of that argument their Lordships do not take time to analyse its pros and cons.

Subclause 9 (C) (v), like subclause (iii), was a provision designed solely to safeguard BPA. It was in the following terms:

“Indigenous Crude Oil

If subsequent to the date hereof—

- (a) The Commonwealth Government shall refix the Absorption formula, the Allocation formula and/or the price per barrel of indigenous crude oil under the Government's policy relating to indigenous crude oil and/or
- (b) The Seller shall be prohibited from supplying imported Super Motor Spirit, Diesoleum and/or Furnace Oil to the Buyer

then the Seller may within three (3) months after the said event give notice thereof to the Buyer and fix a revised base price or prices per metric ton for supplies of Super Motor Spirit, Diesoleum

and/or Furnace Oil hereunder and provisions for the variation of each such revised base price, and save as herein provided such revised base price or prices per metric ton and variation provisions shall become operative on the day stated in the notice being a date not less than three months after the date of service of the notice. If such revised base price or prices per metric ton and variation provisions shall be unacceptable to the Buyer then within one month after the receipt of the said notice the Buyer may give three (3) months' notice in writing to the Seller to terminate upon the expiration of such notice its obligation to purchase under this agreement the product or products the revised base price of which is unacceptable in which event the Seller will until the date upon which such obligation terminates supply that or those products (as the case may be) to the Buyer at the base price per metric ton effective immediately prior to the date of the first mentioned notice subject to adjustment thereafter and in accordance with the terms and conditions of this agreement other than this clause. If pursuant to this sub-clause a revised base price shall become operative for Super Motor Spirit and/or Diesoleum then in respect of that product or products having a revised price clause 11 hereof shall as from the date of the operation of such revised price be construed as if 'indigenous crude penalty' had been deleted therefrom."

It will be observed that in the event of action by the Australian Government of the type envisaged this subclause follows the pattern of subclause (iii) in that BPA may give notice fixing a revised base price (and in addition laying down a new scheme for its variation) in respect of one or more of the three products and Nabalco if it finds the revision unacceptable may terminate the contract in respect of the relevant product on three months' notice.

The precise question of construction is whether BPA is correct in its contention that in the circumstances stated in its notice of March 1974 (quoted above) it was, within subclause 9(C)(iii), able only on onerous terms to obtain supplies of furnace oil from its present or then usual sources and in consequence thereof incurred substantial additional costs in respect of the supply of furnace oil deliverable under the contract.

Nabalco first contends that the question whether there were here onerous terms in the BPA/BPT contract must be answered simply by regarding that contract: that since the new and drastically increased price payable by BPA for furnace oil was no more than the world market price the requirement that it should be paid could not be described as an onerous term: if anything it was the price terms of the Nabalco contract which had become onerous. The learned judge on this point said:

"Plainly the expression 'able only on onerous terms to obtain supplies' of, in this case furnace oil, relates to the defendant's obligations as seller or supplier under this contract. The expression is used in relation to its obligation to supply in the required quantities at the base prices provided for in clause 8 adjusted from time to time as provided for in clauses of the contract other than the one under consideration"—

i.e. Clause 9(C)(iii). Their Lordships agree with that opinion. Their Lordships also agree that against the background of the base price for supply of furnace oil to Nabalco the drastic increase to BPA is well worthy of the word onerous.

The question of construction, however, is not susceptible of such a facile solution. If the words "onerous terms" in subclause (iii) are to be construed in the context of the Nabalco contract, so must the whole scope of subclause (iii).

Nabalco invite attention, in construing subclause (iii), to the other subclauses of Clause 9 and, of course, in particular to subclause (C) (i), which latter subclause is, it is suggested, the sole and exclusive provision touching variation of base prices in relation to movements in world market prices (F.O.B. values) which had not come into operation at the relevant time, and which of course BPA did not purport to operate.

Counsel for Nabalco gave examples of situations in which subclause (iii) in its reference to onerous terms might have been intended to operate without embracing an advance in world market prices: some were rather far fetched but their Lordships are satisfied that subclause (iii) in its reference to onerous terms would not lack potential content unless such an occasion were included. However this does no more than deny to BPA an argument that would have been conclusive in its favour.

Nabalco contend, as indicated, that subclause (i) deals to the exclusion of any other part of the contract with base price variations related merely to shifts in world market prices; these must be substantial; and the parties show by subclause (i) that for the first five years even if substantial such shifts are not to affect base prices. Similarly, it is said, Clauses 9 (A) and 9 (B) contain the entire provision for adjustment of base prices in relation to movements in freight rates. It contends that any other construction of the relationship between subclauses (i) and (iii) would be grossly one sided, since on a sharply declining world market price in e.g. furnace oil Nabalco for five years would be tied to paying a price considerably higher than that for which elsewhere it could obtain its supplies, while BPA might have an escape under subclause (iii) in that same period.

Nabalco further argues—as it also did in support of its first contention—that, having regard in particular to the heading to subclause (iii) "Interruption to Seller's Sources of Supply", that subclause is concerned only with something peculiar to those sources: and that a general increase however substantial in world prices cannot be that. Their Lordships cannot however place reliance upon a label to the subclause which on any footing is inapt. Nor can they accept the contention that onerous terms must be such as amount commercially to interruption.

Their Lordships would observe that, although it would appear that at the date of the contract OPEC had not shown its teeth, and indeed the original base price for furnace oil reflected less than the current market price, nevertheless as a commercial matter obviously the most important need for an escape under subclause (iii) would for BPA be the event (which occurred) of a drastic increase in the cost to it of its major requirement of supply to Nabalco of furnace oil. Whatever might be the decline in the first five years of world prices of furnace oil there was a limit to Nabalco's disadvantage: for BPA, unless subclause (iii) covered the case, the stranglehold of OPEC on supplies of crude over the industrial nations could involve BPA in virtually unlimited loss under the contract in the first five years. Such an event as occurred was commercially that against which BPA would be most anxious to guard itself: far more so than the examples of possible operation of subclause (iii) put forward in argument by Nabalco.



It is to be observed that Nabalco's argument is the equivalent of saying that there is implicit in subclause (i) the equivalent of an express provision that only under that subclause should shifts in world market prices concern base prices. This is asserted by implication. But it was not so expressed in subclause (i), as it might readily have been. Why then should it be implied that the generality of subclause (iii) be overridden, when subclause (iii) in terms applies to an event occurring "at any time"?

It is, it appears to their Lordships, crucial to Nabalco's argument that subclause (iii) cannot in the context of subclause (i) relate in any way to shifts in world prices: but an occasion might arise of an inability in BPA to obtain supplies from its usual source owing to a large OPEC member being barred to the consuming world, and that very fact might push up world market prices. Their Lordships are unable to see why within the precise language of subclause (iii) this would not be a case in which BPA would be unable to obtain supplies from its present or usual sources and in consequence of that inability would incur substantial additional costs by going to another source at the new world market price: for, but for the inability, BPA would have continued at its former source at the old world price. Further; when Nabalco argues that increases in freight can only affect base prices if within (for furnace oil) Clause 9(B) and cannot therefore however substantial come within 9(C)(iii), it ignores the fact that subclause (iii) refers to a change of usual route, which might well involve BPA in substantial additional costs of supply, and so trigger subclause (iii), notwithstanding the (somewhat artificially based) provisions for automatic shifts in base prices dependent on freight assessments Aden/Gove.

A further argument for Nabalco was based upon a suggestion that if subclause (iii) could embrace in "onerous terms" a mere increase in world market values there could arise after the five year period an inextricable tangle of notices and counter notices. Their Lordships are by no means convinced of this. Inasmuch as "onerous terms" must be construed in the context of the BPA/Nabalco contract and inasmuch as BPA is by subclause (i) given a cushion or let-out in that period under subclause (i) it may well be that the terms would not be onerous. Their Lordships feel no difficulty in holding that the event which happened could involve onerous terms in one period and not in the other: it would not be a matter of construing the phrase differently at different times, since the phrase itself is in point of quality ambulatory in varying circumstances. If that were wrong their Lordships see no reason why BPA should not elect which subclause to operate: if BPA elected to operate subclause (i) it would not be entitled by purporting to operate subclause (iii) to deprive Nabalco of its right to terminate the whole contract. If BPA elected to operate subclause (iii) it would not be entitled, if Nabalco exercised its right under subclause (iii) to determine the contract as to the particular product, to operate subclause (i) to determine the whole contract.

It is at first sight an attractive legal contention that in subclause (i) alone is to be found provision for associating alterations in world market values with possible alterations in base prices. But on closer consideration, as has been observed, there is no expression in subclause (i) of exclusivity in that regard: any such exclusivity must rest upon implication: and their Lordships are not able to make such implication so as to exclude the events which took place from falling within the scope of the "onerous terms" provision of subclause (iii).

Their Lordships do not overlook the argument that if inability to obtain supplies from the usual source coincided with an upsurge in world market prices such as occurred in the present case *not* as a consequence of the closure of that source it might not be possible for BPA to operate subclause (iii): for it would not be obtaining supplies on onerous terms from its usual source, and inasmuch as it would have had to pay the new market price to its usual source had it been able to obtain supplies therefrom it might well be said that the additional cost payable to a new source was not a consequence of the inability. If that be so it appears to their Lordships that this very improbable coincidence is a *casus omissus*, a circumstance not to be wondered at in a document of which the drafting is in some respects far from happy, and which inclines the reader to suspect a degree of patchwork in its preparation.

The learned judge reached a different conclusion on the point of construction because otherwise it would give to subclause (iii) an overriding effect: that if that had been intended clearer words would have been used and subclause (iii) would not have been placed only third in Clause 9 (C) [Record p. 334]. Their Lordships cannot agree with that reasoning: rather, as indicated, they consider that if subclause (i) was intended to exclude from the language of subclause (iii) the event of an increase in world market prices which would otherwise qualify as an onerous term, that intention would have been expressed. Their Lordships are however in entire agreement with the learned judge that the question of construction is a difficult one.

Their Lordships are accordingly of opinion that this appeal should be allowed, that the judgment below should be set aside, and that Nabalco should pay the costs of BPA of this appeal and in the Court below. Their Lordships have humbly advised Her Majesty accordingly.



**In the Privy Council**

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