

couver, may charter a ship over to, say, Newcastle island, or something of that nature, and they have a voyage charter. Do I understand that your position on this amendment and your opinion is that in the event that the harbour board is not able to lay a claim or collect a claim from the ship you should then have the right to lay a claim against the voyage charterer?

Mr. FINLAY: No. Our contention is that, first, the term "charterer" should be given the connotation of "charterer by demise". He is the person who actually becomes the temporary owner of the ship. That would not apply in your example which, I take it, would be more in the nature of a pleasure expedition. You do not take over the vessel; in other words, you simply make arrangements with a steamship company.

Mr. WINCH: But are you not chartering that for the entire voyage?

Mr. FINLAY: You are chartering it, but that is not what is known by a charter by demise. In a charter by demise, the charterer is, in other words to use the other term in common law the tenant, so to speak of the vessel, the lessee. It is a temporary transfer of title. He takes the ship, including the crew and the master all under his control. That is a charter by demise. In the example you cite, that would be merely a voyage charterer.

Mr. WINCH: That is exactly the term you used when you spoke, a voyage charterer.

Mr. FINLAY: Yes, a demise charterer.

Mr. WINCH: Now you are changing it.

Mr. FINLAY: No.

Mr. WINCH: I would like to have that explained if I may.

The ACTING CHAIRMAN: I think we will have to accept the statement made by Mr. Finlay rather than what you assumed he said on an earlier occasion.

Mr. NICHOLSON: Assuming that the boat gets away from Churchill because of the laxity of the Harbours Board and the claim is later made against the Montreal Shipping Company, it seems to me to be unfair to have the Montreal Shipping Company liable for a claim because the National Harbours Board had failed to seize the vessel at the time the damage was done. Would you care to comment on that?

Mr. FINLAY: First, I would submit that under the present Act that is the situation, that is to say, that the board is perfectly free under the Act as it stands to do just that, but more important than that point is this. The term used by the counsel for the federation is "if the board is negligent in allowing the vessel to escape", but I suggest that there is no reason why the board should be regarded as under any obligation to seize that vessel. Why should we? If an individual does damage with some other instrument, why should it be considered incumbent upon the injured party to necessarily seize the instrument? Certainly we ordinarily do, but supposing that we do not, and of course we may not through many circumstances? There have been two cases at least within recent years in Vancouver where we did not seize the vessel, simply because we did not know of the damage until after the vessel had sailed. That was an excellent example of the kind of thing that can happen. However, supposing we do not? Supposing that there is laxity of some sort on the board's part and that we do not seize the vessel, the suggestion made by the shipping federation is that under the present Act, unless we had chosen to seize the vessel in the first instance, we would not be able to sue, let us say, the Canadian agent or the Canadian charterer, this being a foreign vessel in the example cited, but, with deference, I would disagree with that. I would suggest that there will not be found any decision of any court in which it has ever been held that a party was obliged to exercise both remedies. There have been cases where a court has said that where one remedy was exercised