In the "Nerano" ([1994] 2 LLR 50), the English High Court reviewed the circumstances in which an arbitration clause in a charterparty may be successfully incorporated into a bill of lading (see "Sea Venture", Vol. 16, page 84). The charterparty arbitration clause in question read as follows:

"... should any dispute arise between the Owners and the Charterers the matter in dispute shall be determined in London, England, according to the Arbitration Acts ... and English law to apply".

The High Court ruled that a charterparty arbitration clause will only be successfully incorporated into a bill of lading if the wording of the bill of lading either:

1. expressly refers to the arbitration clause, or

2. incorporates all the terms and conditions of the charterparty and the wording of the charterparty arbitration clause is wide enough to include disputes under the bill of lading between the parties to the bill of lading contract.

The Court of Appeal has now upheld the decision of the High Court ([1996] 1 LLR 1). In doing so, the Court of Appeal confirmed that the term on the front of the bill of lading which read "The conditions as per relevant charterparty dated 27.1.90 are incorporated into this bill of lading and have preference if there is conflict, English law and jurisdiction applies" was not sufficient in itself to incorporate the charterparty arbitration clause into the bill of lading. The Court reached this conclusion because a) the term did not expressly refer to the charterparty arbitration clause and b) the arbitration clause in the charterparty was not wide enough to include disputes under the bill of lading between the parties to that contract.

However, the Court also held that the term on the front of the bill of lading was not inconsistent with another on the reverse which read "1. All terms and conditions, liberties, exceptions and arbitration clause of the Charterparty, dated as overleaf, are hereunder incorporated". Thus, the two terms should be read together to determine what bargain the parties intended to make. When the two terms were read together, the Court concurred with the High Court that the wording of the bill of lading expressly identified the charterparty arbitration clause and that this was, therefore, successfully incorporated into it.