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3. SPECIAL FEATURES OF THE CASE

E. Case Brought by Application

(2) Burden of Proof

Is it fair to say that the burden of proof (and persuasion) lies more heavily on the moving party in a case brought by application than it does on either party in a case brought by special agreement? No, it is not. What is fair to say is that-consonant with the Court's practice-the burdens of proof and of persuasion lie on the party that advances a point for adjudication.

6. SPECIFIC FACT-FINDING BY THE CHAMBER

B. Relation of Burden of Proof

At numerous points in the Judgment the Chamber balanced up the evidence and found it persuasive, or wanting, or nonexistent. As elaborated above, in various instances different kinds of proof were taken as convincing, or by contrast not found to exist. Beneath all these determinations, of course, there ran the common-sense leitmotif of the burden of proof: that the party asserting something to be so must prove it by a preponderance of the evidence.

Referring Principles:
XII.1 - Distribution of burden of proof