ing on the interpretation of that of the previous year.

"I return now to the Education Act 1897, where the term 'voluntary school' is defined as being a 'state-aided day-school not provided by a School Board.' There can, I think, be no doubt that when Parliament used the term 'state-aided,' it used a term which it considered to have a definite meaning, and one which did not need interpretation. Having regard to the history of educational legislation from 1872 onwards the term had come in Parliamentary usage to have a definite and stereotyped meaning. That is the only meaning which it can reasonably receive in the clause providing the 3s. aid grant in which the definition of voluntary school occurs, and if so I can give it no other meaning in the subsequent clause which gives exemption from local taxation to voluntary schools.

"As the schools of the complainers are not non-School Board elementary schools receiving a Parliamentary Grant, but secondary or higher class endowed schools participating only in the Secondary Education Grant in aid, they are not voluntary schools in the sense of the section which I am called upon to interpret. The note of suspension will therefore fall to be refused with expenses."

Counsel for the Complainers—Dean of Faculty (Campbell, K.C.)—W. J. Robertson. Agent—Alexander Heron, S.S.C.

Counsel for the Respondents—Clyde, K.C.—J. E. Graham. Agents—R. Addison Smith & Company, W.S.

Friday, January 31.

SECOND DIVISION.

[Sheriff Court at Greenock.

CROWN STEAMSHIP COMPANY, LIMITED *v.* LEITCH.

Ship—Bill of Lading—Contract—Obligation on Consignee to Receive Goods "as Fast as the Steamer can Deliver"—"Quick Dispatch"—Shipowner Suing for Expense Incurred in Furthering Handling of Cargo after Delivery on Quay.

A bill of lading provided—"The goods to be received by the consignee from the ship's tackles as fast as the steamer can deliver, any custom of the port to the contrary notwithstanding, and all charges incurred after being discharged necessary for the steamer's quick dispatch to be paid by the owner or consignee of the goods."

In an action by shipowners against the consignee of the cargo, to recover a sum expended by them for the purpose of having removed from the side of the quay and run into sheds whatever portion of the cargo his men were unable to handle, and so preventing the quay becoming blocked and the ship's delivery impeded, *held* (*dissenting* Lord Stormonth Darling) (1), *distinguishing Hulthen* v. *Stewart & Company*, [1903] A.C. 389, that the action being one to enforce a special contract and not being for demurrage, was to be decided solely upon the terms of the contract; (2) that the words in the bill of lading "all expenses incurred after being discharged necessary for the steamer's quick dispatch" contemplated the expenses now sued for, and the words "quick dispatch" meant, as previously provided, "as fast as the steamer can deliver, any custom of the port to the contrary notwithstanding"; (3) that the consignee could not plead as a cause of delay (*a*) the weighing of the cargo before shedding, though that was the usual custom, nor (*b*) any unusual or unforeseen quickness of delivery by the ship, he having in fact been previously advised of the probable rate; and (4) that the pursuers were consequently entitled to recover their outlay to a reasonable amount.

The Crown Steamship Company, Limited, 175 West George Street, Glasgow, raised an action in the Sheriff Court at Greenock against John Leitch, sugar broker there, for payment of the sum of £40, 19s. The pursuers were the owners of the steamer "Crown of Granada." The defender was the consignee of 2080 tons of sugar out of a cargo of 3500 tons carried in the said steamer from the West Indies to Greenock. The sum sued for was the alleged expense incurred by the pursuers in obtaining "quick dispatch" at that port, for which they claimed the defenders were liable under the bill of lading.

The clause in the bill of lading upon which the case turned is quoted *supra* in the rubric.

The defenders pleaded, *inter alia*—"(3) The expense not having been incurred through the fault of the defender, nor in accordance with the terms of the bill of lading, the defender is entitled to absolvitor. (4) *Separatim*, the sum sued for is excessive."

The steamer, having arrived at Greenock between three and four o'clock on June 27th 1906, began discharging at seven a.m. on the 28th, and discharged the sugar consigned to the defender more quickly than the men employed by him were able to weigh it and clear it from the quay, with the result that from time to time the quay became blocked. When this occurred men in the employment of the pursuers cleared the quay by running the bags into sheds without previously weighing them, and the expense incurred for these men was the sum sued for. It was usual to weigh goods before shedding, but this was not invariably done. The defender had been advised as to the probable rate of delivery by the ship. (For fuller details *v.* opinions of Lord Low and Lord Stormonth Darling, *infra*.)

On 21st December 1906 the Sheriff-Substitute (NEISH) assoilzied the defenders, finding in fact "(3) that the pursuers have not proved that the sum sued for consists of

'charges incurred after being discharged, necessary for the steamer's quick dispatch' in terms of said bill of lading."

In his *note* he said—" . . . It appears to me that the first question which I have to decide is as to the meaning of the words 'quick dispatch.' I think there can be no question that the pursuers' whole case is founded on this—that the words 'quick dispatch' mean 'as fast as the steamer can deliver.' That is abundantly clear from the pursuers' letters to the defender before the ship arrived, from their actings in bringing from Glasgow a large number of men to 'run in' to the sheds any sugar which the defender might be unable to deal with as quickly as tendered, and from the evidence of their witnesses.

"I am clearly of opinion that this interpretation is contrary to a long series of decisions, and that the words 'quick dispatch' must be construed in the light of the whole surrounding circumstances existing at the time of the discharge, not being circumstances brought about by the person whose duty it is to take delivery, or circumstances within his control—*Hulthen* v. *Stewart & Company*, [1903], A.C. 389, Lord Macnaghten at page 392; *Hick* v. *Raymond*, [1893], A.C. 22. I am quite well aware that in most, if not all, the cases some such words as 'customary dispatch' or 'custom of the port' were included in the bill of lading or charter-party, whereas here custom of the port is expressly excluded; but the ratio of all the decisions seems to me to be equally applicable to the words used in this case. That ratio is that words such as 'as customary' or 'as fast as steamer can deliver' are not to be read as relating to average or ordinary conditions so as to fix a time which is calculable beforehand (thus amounting to a totally different condition, not uncommon in charter-parties, viz., where the number of days for discharge is fixed), but must be read in relation to the circumstances under which the work has actually to be done (Carver, 'Carriage by Sea,' 4th edition, sec. 614).

"Further, with regard to the words 'custom of the port to the contrary notwithstanding,' in my opinion no question relating to anything which can properly be called the custom of the port of Greenock is raised in this case. . . ."

The pursuers appealed, and argued—The bill of lading imposed an absolute obligation on the consignee to receive the goods "as fast as the steamer can deliver them" —*Kruuse* v. *Drynan & Company*, July 9, 1891, 18 R. 1110, 28 S.L.R. 958; *Maclay* v. *Spillers & Baker, Limited*, 1901, 6 Com. Cas. 217; Carver on Carriage by Sea, 4th ed., sec. 614 a. The judgment in *Maclay* did not depend on the occurrence in the bill of lading of the word "continuously." "Quick dispatch" was a short method of repeating "as fast as the steamer can deliver," and to give the words another meaning would make worthless the primary stipulation, for it would be without sanction. In all the cases in which such words had been construed as merely imposing reasonable diligence in view of existing circumstances, there had either been in the bills of lading an express reference to custom, as in *Hulthen* v. *Stewart & Company*, [1903] A.C. 389; *Postlethwaite* v. *Freeland*, 1880, L.R., 5 App. Cas. 599; *J. & A. Wyllie* v. *Harrison & Company*, October 29, 1885, 13 R. 92, 23 S.L.R. 62; *Castlegate Steamship Company, Limited* v. *Dempsey*, [1892] 1 Q.B. 854; *Good & Company* v. *Isaacs*, [1892] 2 Q.B. 555; or there was silence on this point, and it was implied as being one of the elements in arriving at what was a reasonable time, as in *Hick* v. *Raymond & Reid*, [1893] A.C. 22; but in no case had such a rule been applied when, as here, custom was expressly excluded. Moreover, this was not a question of demurrage. In any event there was no circumstance here which prevented the defender accepting delivery as fast as it was tendered. He need not have weighed the sugar on the quay, and of course could not found on any custom of so doing that might exist. There was no evidence that the delay was occasioned by failure on the pursuers' part to separate the defender's sugar from the rest of the cargo.

Argued for the defender (respondent)—Charges necessary for the steamer's quick dispatch meant charges necessary to give reasonably quick delivery in the circumstances, and having regard to the facilities then available at the port of discharge — *Hulthen* v. *Stewart & Co.* (*cit. sup.*), *Hick* v. *Raymond* (*cit. sup.*); *Temple, Thomson, & Clark* v. *Runnals*, 1901, 18 T.L.R. 18 and 822; *J. & A. Wyllie* v. *Harrison & Co.* (*cit. sup.*); *Postlethwaite* v. *Freeland* (*cit. sup.*); Carver on Carriage by Sea, sec. 614 a; Scrutton on Charter-Parties, p. 258. That in these cases custom of the port was one circumstance taken into account did not prevent their application here when the defender was not founding on custom of the port. The inclusion of words referring to custom or the implication thereof was not the ground of judgment. "Quick dsipatch" was not a short repetition and invocation of the former phrase " as fast as the steamer can deliver," and was not so favourable to the pursuers' contention, but even if the longer phrase were again read in the above argument would apply. Considering that the pursuers delayed to start discharging the previous day, it could not be said that the expenditure now sued for was necessary for the steamer's quick dispatch. Delivery involved weighing to see that the proper quantity was delivered; it at any rate involved separation of the defender's goods from the rest of the cargo—Carver on Carriage by Sea, sec. 462. The failure to separate the goods and the interference of the pursuers' men had occasioned some confusion and delay, but even so, the discharge showed reasonable diligence. The cases founded on by the pursuers were distinguishable. In *Kruuse* v. *Drynan* (*cit. sup.*) there was undue delay in the circumstances. Moreover, the goods there had merely to be discharged, whereas here they had to be delivered, involving separation. In *Maclay* v. *Spillers & Baker*,

Limited (*cit. sup.*) there was an obligation that goods were to be received by the consignee "continuously." In any event, the sum sued for was excessive. The amount handled was 468 tons, and the evidence showed that this could have been run in for 6d. a ton, amounting to £11, 14s.

At advising—

LORD JUSTICE-CLERK — The pursuers claim from the defender the expense of providing labour to facilitate the discharge of a cargo of sugar from their vessel. They make this claim in respect of a clause in the bill of lading under which the consignees were bound to take "from the ship's tackles as fast as the steamer can deliver, any custom of the port to the contrary notwithstanding." The consignees were taken bound to pay all charges necessary for the steamer's "quick dispatch."

It is the fact that the defenders were only consignees of a part of the cargo, but it does not appear to me that this fact in any way affects the decision of the question in this case.

It cannot be disputed that the arrangements made by the defender did not admit of the cargo being cleared from the quay as quickly as the ship could deliver, for it is quite certain that with one set of scales opposite each hatch, which was all that the defender provided, the bags brought from the hold could not be weighed fast enough to keep the quay clear for further discharge. To prevent the blocking of the discharge the ship provided gangs of men, who, when there was a tendency to accumulation, ran the goods back into the shed behind, so as to clear a space for the ship's tackles to lay down more cargo. Such a removal before weighing was not according to the usual practice, but it was a procedure which was sometimes followed.

The first question is, what is the meaning to be put upon the clause in the bill of lading? It is, I think, very definite and clear, and there is no ambiguity in its terms. All custom is excluded; the bargain shortly is for a delivery as fast as the ship can bring the goods forward to the ship's side. To me it appears to be vain to contend that in the words excluding the power to found on port custom the practice of weighing at the ship's side is not included. It excludes everything that can hamper the ship's speed in delivering, which undoubtedly weighing at the ship's side may do, if the weighing appliances are not sufficient to weigh as rapidly as is necessary to prevent delay at the ship's tackles, the ship delivering by her ordinary appliances as was the case here.

The defender, however, maintained that the latter part of the clause, in which the words "quick dispatch" are used, has a less extensive meaning than the words in the earlier part of the clause, and must be read to mean only a reasonable despatch according to the circumstances existing at the time. The defender seems to me to be here in a dilemma. If by the circumstances he means general circumstances, then I think it hopeless for him to attempt to escape from the application of the clause as one clause, to be read as one, "quick dispatch" referring to the concrete phrase "as fast as the steamer can deliver." If, on the other hand, by "circumstances" he refers to port circumstances, his contention is expressly excluded by the words "custom of the port notwithstanding." As I read the second part of the clause it does nothing more than give a right to the ship, if dispatch is being hindered, to claim the expense she is put to in clearing away the accumulation which is causing the hindrance, and exempt her from any claim on the part of the consignee for any unusual expense he may be put to in keeping reception of the goods in such order that the ship shall not be delayed, and forced to discharge more slowly than her appliances enable her to do when she is free to do full work.

I do not consider it necessary to notice the argument of the defender based on the decision of the House of Lords in the case of *Hulthen* v. *Stewart*, except to say that the question in that case related to demurrage arising on the lapse of a specific number of days stipulated for discharge. This is not in any sense a case for demurrage. The sole question is, whether the defender failed to give the ship the despatch stipulated for, and whether the pursuers having taken steps to obviate the delay caused by that failure, are entitled to maintain that the cost incurred in doing so is exigible from the defender. If, as I think is the case, the only difficulty in fast delivery was the desire of the defender to weigh at the quay, he cannot, as I think, found upon that except as being a port custom, and this ground is expressly excluded by the terms of the bill of lading. I am therefore of opinion that the pursuers were entitled when the defender failed to receive cargo and clear the quay as the ship's tackles delivered, to provide force to effect that themselves at the expense of the defender, seeing that the rate of delivery was clearly notified to them, and it was pointed out to them that if they desired to weigh at the quay extra scales would be necessary.

As regards the charge made by the pursuers, I do not think it can be held just. There is evidence that the 1s. 9d. they charge per ton is largely in excess of what such work is usually contracted for by those who provide gangs for quay work, and there is no counter evidence. The high charge was in part the result of the pursuers bringing a large gang all the way from Glasgow daily. In my opinion the pursuers' charge should be cut down to the sum represented by 6d. per ton, which comes out at £11, 14s.

LORD LOW—(read by the Lord Justice-Clerk)—The question in this case depends upon the construction of a clause in the bill of lading of a cargo of sugar which was brought by the pursuers' s.s. "Crown of Granada" from Barbadoes to Greenock. The clause is in the following terms . . . (*quotes, supra in rubric*). . . .

The circumstances in which the question arises are these. The defender was con-

signee of a part only, although a large part, of the sugar, but I do not think that the main question in the case (the meaning and effect of the bill of lading) is affected by that circumstance. The question would have been the same if the defender had been consignee of the whole cargo. The general custom of the Port of Greenock is for sugar to be weighed on the quay as it is put out of the ship and before it is removed into the sheds of the Harbour Trust adjoining the quay. I understand that in all cases the sugar must be put into the sheds for Customs House purposes. Sometimes—although it is the exception to the general rule—the sugar is run into the sheds as it is put out of the ship, and is weighed in the sheds. That appears to be an exceptional course to follow, but it is sometimes done, and is quite lawful.

The "Crown of Granada" commenced to discharge at 7 o'clock on the morning of the 28th of June 1906. The pursuers had two gangs of men to discharge the cargo at each of the four main hatches, which enabled the derricks to be kept constantly at work, and the cargo to be discharged as fast as it could be delivered from the ship's tackles. The defender on the other hand had only one gang of men and one weighing machine at each hatch. The result was that the defender's men could not weigh the sugar and remove it to the sheds as fast as it was put out of the ship, and the consequence was that from time to time the quay became blocked with bags of sugar with which the defender's men were unable to deal. When that happened men in the employment of the pursuers cleared the quay by running the accumulated bags into the sheds without being weighed. If that had not been done it would have been necessary to stop the discharge when a block occurred until the defender's men were able to weigh and remove the bags which had accumulated.

The pursuers now claim from the defender the expense which they incurred in clearing the quay when a block occurred, and the first question is whether that is a claim which they are entitled to make in terms of the clause in the bill of lading which I have quoted.

It seems to me that, so far as the language used is concerned, there is no ambiguity in the first branch of the clause. The consignee is taken bound to receive the goods as fast as they can be delivered by the use of the ship's tackles, and that obligation is not to be limited or minimised by any custom of the port.

Upon that part of the clause I have two remarks to make. In the first place, I think that the words "any custom of the port" referred to, or at all events included, the custom of weighing the sugar on the quay before it was removed into the sheds. That is the only custom of which there is any evidence, and it is plainly a custom which materially affected the rate of discharge, because it is admitted that if, instead of weighing the sugar upon the quay, it had been at once run into the sheds, the defender would have had no difficulty in receiving the cargo as fast as the ship delivered it.

In the second place, although in my judgment the words which I am now considering are unambiguous, I have no doubt that they must be construed reasonably, and that the extent of the consignee's obligation may depend a good deal upon the circumstances existing in the particular case. For example, if the shipowner devised some means by which the cargo could be discharged much faster than the consignee had any reason to anticipate or be prepared for, I do not think that his failure to take delivery as fast as it was tendered would be a breach of his obligation. For reasons which I shall state presently, however, I do not think that any case of that kind has been established.

I now come to the second branch of the clause, which is much more difficult of construction than the first. I repeat the words "all charges incurred after being discharged necessary for the steamer's quick dispatch to be paid by the owner or consignee of the goods."

There is no dispute that the words "after being discharged" mean after goods have been discharged, but I think that it is also plain that they do not mean after all the goods have been discharged, because if all the goods were discharged the ship would be free, and there would be no room for incurring charges to ensure quick despatch. The clause therefore referred to something which might require to be done during the course of the discharge, and the only thing, so far as I can see, to which it could possibly refer was just the very thing which happened, namely, a block occurring which would have interrupted the discharge if the pursuers had not cleared it away.

There remain the words "quick dispatch." The pursuers argued that these words referred back to the first part of the clause, and that the expression "for the steamer's quick despatch" was just a short way of saying "to enable the steamer to discharge the cargo as fast as she can deliver from the ship's tackles." The defender, upon the other hand, contended that the words "quick dispatch" must be read according to their ordinary signification, and as meaning that the ship should be discharged with reasonable speed looking to all the circumstances.

I think that the construction for which the pursuers contend is in accordance with the intention of the clause. If it were not so, the unequivocal obligation which was laid upon the consignee by the first branch of the clause would be inoperative and ineffectual, because unless the shipowner could step in under the second branch of the clause and clear away an accumulation of bags which would otherwise interrupt the discharge, the consignee would incur no penalty for failing to implement his obligation to receive the goods as fast as the ship could deliver them. I further think that the expression "quick dispatch" is a flexible expression which may quite well bear the interpretation which I have indicated if the context shows that that is the

sense in which it was used. It is also important to remember that in any view the custom of the port is excluded. That was conceded by the defender's counsel. Now if the custom of the port had not been excluded, and if the stipulation had simply been that in discharging the cargo the steamer should get "quick dispatch," I think that the defender could have successfully maintained that he was entitled to weigh the cargo on the quay, and to employ the number of men and of weighing machines which he did employ, because that was in accordance with the custom at Greenock. As the clause stands, however, the defender cannot found upon that custom—it is expressly excluded—and as I have already pointed out he admits that if he had not weighed the sugar upon the quay but run the bags into the sheds, he could with the same number of men have received the cargo as fast as it could be delivered from the ship's tackles. Except the custom of weighing the sugar upon the quay, I find no circumstances which would have prevented the defender from taking or justified him in not taking delivery as fast as the sugar was discharged.

It is said, however, that the claim of the pursuers is contrary to a well-established principle which was finally settled by the judgment of the House of Lords in *Hulthen* v. *Stewart & Company*, [1903] A.C. 389. That principle is that if a specific number of days is fixed within which the discharge of a ship is to be accomplished, then if these days are exceeded demurrage is due whatever the actual circumstances were. If, upon the other hand, a specific number of days is not fixed, but the contract is to discharge "with all despatch," or "as fast as steamer can deliver," or expressions of that sort, the question whether demurrage is due depends upon whether the discharge has been carried out with reasonable expedition and diligence in view of whole circumstances.

If the pursuers had been claiming demurrage I agree that their case would have fallen under the latter category, because I cannot read the bill of lading as fixing a specific time for the discharge. But there is here no question of demurrage. The only question is whether under a special agreement the pursuers were entitled to do at the defender's expense certain work which the defender was under obligation to do himself. No doubt the object of the agreement was to prevent the steamer being detained, but that does not make the pursuers' claim one for demurrage, nor does it necessarily introduce a principle which would have been applicable if the claim had actually been for demurrage.

The difficulty in this case seems to me to be entirely one of construction. But suppose that there had been no ambiguity in the language used, and that the bill of lading had provided in the clearest terms that the consignee should receive the goods as fast as the steamer could deliver from the ship's tackles, any custom of the port to the contrary notwithstanding; that if the consignee chose to weigh the goods upon the quay he should be bound to employ a sufficient number of men and of scales to enable him to do so without interrupting or retarding the discharge; and that if he did not do so the ship should be entitled at his expense to do what was necessary to prevent the discharge being interrupted or retarded, by removing to the sheds without being weighed any bags of sugar which the defender was unable to weigh as fast as they were delivered by the ship's tackles—if that had been the bargain between the parties, as I think it truly was, expressed in quite unambiguous language, I fail to see why it should not be a perfectly lawful bargain and enforceable according to its terms.

The only ground upon which such a contract could be held to be not enforceable would be that it was not sufficiently definite. Now, in the first place, I think that the obligation laid upon the consignee was sufficiently definite for the purposes of the contract, because I imagine that persons experienced in the unloading of ships would know, with sufficient accuracy for practical purposes, what was involved in an obligation to receive the goods as fast as they could be delivered from the ship's tackles. None of the witnesses says anything to the contrary. In the second place, however, I do not regard the obligation as being absolutely unconditional. I have already indicated circumstances which in my opinion would absolve the defender from the obligation to take delivery as fast as the steamer could deliver, but in the discharge of the cargo which actually took place I repeat that I can find no circumstance (except the custom to weigh upon the quay, upon which the defender cannot found) which prevented him taking delivery as fast as it was tendered.

The only circumstance which might have been regarded as absolving the defender from exact fulfilment of the contract is that apparently (the evidence is by no means clear on the point) the pursuers employed an unusually large number of men to discharge the cargo, and if it had been shown that the defender had been taken by surprise and could not reasonably have been expected to be prepared for the discharge being made by so strong a force, that consideration might have had a material bearing upon the question of his liability. But no such defence is open to the defender, because he was given ample notice of the manner in which the pursuers were to discharge the cargo. He was told that the sugar would be delivered from "at least four derricks at the rate of not less than 40 hogsheads and 300 bags per hour at each derrick," and that he would be tendered "ten bags of sugar, in slings of five bags each, with each delivery of the derrick." He was further told that "if you intend to weigh the sugar as it is tendered to you it will be necessary for you to have at least two scales to each derrick." He was also told that failing his receiving the sugar as fast as the ship could tender it the owners would put the sugar

into the shed at his expense in terms of the bill of lading.

The defender took no objection to the rate of discharge proposed by the pursuers, nor at the time of the discharge did he take any objection to the employment by the pursuers of men to clear away accumulations of bags. Further, in the correspondence the pursuers proceeded upon the assumption that the meaning of the bill of lading was that for which they now contend, and the defender took no objection. It was not until the pursuers claimed from the defender payment of the sum now sued for that he maintained that their action was not justified by the bill of lading. In these circumstances I think that it is somewhat difficult for the defender to maintain that the meaning of the contract is something different from that to which he assented at the time, and upon the faith of which he allowed the pursuers to act and to incur expense.

I am therefore of opinion that the pursuers were justified in acting as they did, and that they are entitled to recover from the defender the expenses reasonably incurred by them in running into the shed sugar consigned to him. The amount paid by the pursuers to their stevedore for running sugar into the shed was £103, 14s. 7d. The pursuers have divided that amount among the various consignees in proportion to the weight of sugar run into the sheds for each of them. For the defender 468 tons were run in, and his proportion of the total cost, for which the pursuers now sue, is £40, 19s. That is at the rate of 1s. 9d. per ton, which the defender says is an excessive charge. In that I think that he is right. My impression is that the pursuers in their anxiety to secure that the discharge should not be interrupted spared no expense. They had a very large number of men upon the quay ready to run the sugar into the sheds directly a block occurred, and the bulk of the men were brought from Glasgow, which of course cost more than if they had been hired in Greenock. Then no independent evidence was led by the pursuer to show that the charge made by them was a usual and reasonable charge. One witness, however, was adduced by the defender—Mr Harvey, secretary of the Greenock Beetroot Sugar Association, who said—"Part of our business is running in and piling up sugar discharged from steamers at the quays. Our rate therefor is 6d. per ton. I was prepared to run in the cargo in question if that had been ordered." That was the whole of Mr Harvey's evidence, and he was not cross-examined. His evidence therefore is not challenged, and I think that it must be held as establishing that the running in of the sugar might have been done for 6d. per ton instead of 1s. 9d. That brings out a sum of £11, 14s., for which I think that the pursuers are entitled to decree.

LORD ARDWALL—I have found this case to be one of much difficulty. If it were a question of demurrage that was here raised, it appears to me that the decision of the House of Lords in the case of *Hulthen* v. *Stewart & Company*, 1903, A.C., p. 389, affirming the decision of the Court of Appeal, would have been conclusive against the pursuers. But what is here sought to be enforced is a special contract under which I am of opinion that it was the intention of the parties that should delay occur in the removal of the goods by the consignees from the quay at the ship's side the shipowner should be entitled to employ men to run such goods into the sheds in order to give the steamer quick dispatch—that is, dispatch as quickly as the goods could be delivered over the ship's side. The document is very obscurely worded, and unless it had been that the parties, both in the correspondence and on record, and at the discussion on the appeal, assumed that what was pointed at in the bill of lading was charges for removing goods from the side of the quay after they had been put over the ship's side, I should have had great difficulty in construing the clause at all. I think that the proviso, "any custom of the port to the contrary notwithstanding" prevents the defenders from pleading, as they might otherwise have done, that the block was caused by their endeavouring to weigh the sugar before it was put into the sheds. Therefore it must be taken that their obligation was to prevent the front of the quay from being blocked by goods, either by having two weighing machines opposite each hold to weigh the sugar as quickly as the ship could deliver it, or, failing that, to run the sugar straight into the sheds, leaving it to be weighed afterwards, which was what actually was done with a considerable portion of the cargo in question. I do not go further into detail either with regard to the construction of the bill of lading or with regard to the law applicable thereto, as I have had the advantage of reading my brother Lord Low's opinion, and agree with the views which he has expressed.

The next question is whether the sum sued for was a charge "necessary for the steamer's quick dispatch," for it is only such charges which, according to the bill of lading, are "to be paid by the owner or consignee of the goods." Now, I think it is clearly proved that from time to time in the discharge of this steamer a block took place, and that these blocks were removed by the intervention of stevedores' men provided by the shipowners. This being so, the only remaining question is as to the amount of these charges. Now, I think it clear that the shipowners here set about the business of discharging the vessel in a most extravagant manner. They did not content themselves with getting stevedores or quay porters at Greenock but brought them all the way from Glasgow, and brought them in quite unnecessary numbers. It is proved by the uncontradicted evidence of Mr Harvey, a witness for the defenders, that sixpence per ton is a sufficient allowance for running in and piling sugar from the quays into the sheds, and I think it is only that sum that should be allowed in

the present case. It is said that there were 468 tons run in, and at 6d. per ton this amounts to £11, 14s., and for this amount I think the pursuers are entitled to decree.

I think it right to add that it appears to me that the clause under discussion, which it seems is a new one, is not much of an improvement upon the clauses hitherto in use in bills of lading, and instead of being ultimately of any benefit to shipowners, is likely to cost them a good deal more money than is saved, at all events if they follow the course that was adopted by the shipowners in the present case; and I must also add, that although I think that on a sound construction of the peculiar contract which the parties agreed to enter into by the bill of lading, the pursuers were entitled to intervene so as to hasten on as they did the dispatch of the vessel, yet the time saved was of comparatively small amount, and was really not worth all the trouble and expense which the shipowners put themselves to; indeed, it appears on the evidence they would have saved as much time if, instead of beginning the discharge of the vessel on the 28th, they had commenced it immediately on her arrival on the afternoon of the previous day, and been content with the usual rate of discharge of sugar cargoes at Greenock.

LORD STORMONTH DARLING—I am sorry that I cannot reach the conclusion at which your Lordships have arrived. The action is one by shipowners against the consignee of part of a cargo of sugar carried by the pursuers in a general ship to the port of Greenock. The claim is not for demurrage but for a contractual substitute therefor. The clause in the bill of lading on which the action is laid is in these terms—". . . [*Quotes, supra in rubric*] . . ." The pursuers say that they incurred certain charges to a stevedore from Glasgow in landing and removing cargo consequent on failure to take delivery from ship's tackles as fast as steamer could deliver it, and the proportion of these charges applicable to the defender's consignment (which consisted roughly of about two-thirds of the total cargo) the pursuers estimate, so far as handled by their men, at £40, 19s. It is plain, and was indeed admitted by the pursuers' counsel, that this estimate must in any view suffer considerable reduction in amount.

The Sheriff-Substitute, from whom the appeal is brought, has found that the pursuers have not proved that the sum sued for consists of "charges incurred after being discharged necessary for the steamer's quick dispatch," in terms of the bill of lading; and he accordingly has assoilzied the defender with expenses. I am of opinion that the Sheriff-Substitute's interlocutor ought to be affirmed.

The proposition which lies at the root of the pursuers' case is that the clause in the bill of lading requiring "the goods to be received by the consignee from ship's tackles as fast as the steamer can deliver, any custom of the port to the contrary notwithstanding," is practically equivalent to a clause fixing the number of days or hours during which the discharge is to be completed. It is true, they say, that a definite period of time is not prescribed, but a standard is fixed, viz., the ship's capacity for discharge when her tackles are working as fast as they can, and this standard must be perfectly well known to the shipowner and can be ascertained by the charterer or consignee if he takes the trouble to inquire. There is nothing, therefore, they say, vague or uncertain about a clause so read which imports a mechanical equivalent for a definite period of time, and there is no reason for attaching to it different consequences from a clause laying down in plain terms a certain number of days or hours for the discharge. Unfortunately for this argument the point has been considered and determined the other way in a recent judgment of the House of Lords—*Hulthen* v. *Stewart & Company*, 1903 A.C. 389, affirming a decision of the Court of Appeal—reported 1902, 2 K.B. 199. The claim in that case was no doubt one for demurrage, while here it is a claim for something in the nature of demurrage and is intended to have the same deterrent effect. Demurrage being simply "the agreed-on amount of damage which is to be paid for the delay of the ship caused by a default of the charterers at either the commencement or the end of the voyage." A demurrage clause has been held elastic enough to cover damage caused in that way as being "in the nature of demurrage." (See case of *Harris*, 15 Q.B.D. 247). *Hulthen's* case, therefore, seems to me directly in point as covering a case either of demurrage or of something in the nature of demurrage. If the view had prevailed that the two clauses were practically identical (the clause, I mean, fixing a mechanical equivalent, and the clause fixing a definite period of time), the obligation in the case before us would have had to be construed as an unconditional one on the part of the consignee to take delivery within the time which could be shown to be the utmost capacity of the ship's tackles to give delivery, without regard to the actual circumstances of the case, just as if a definite time had been prescribed. But what say the noble and learned Lords? After stating the opposing contentions, and explaining how the case would stand if there were no authority on the subject, Lord Macnaghten said—"It is certainly satisfactory to find that there is a series of decisions, some in this House, and others of great weight both in this country and in Scotland, which leave little or no room for argument. It is, I think, established that in order to make a charterer unconditionally liable it is not enough to stipulate that the cargo is to be discharged 'with all dispatch,' or as 'fast as steamer can deliver,' or to use expressions of that sort. In order to impose such a liability the language used must in plain and unambiguous terms define and specify the period of time within which delivery of the cargo is to be accomplished." This passage

expresses the ground of a unanimous judgment as to the effect of a clause providing for discharge "with customary steamship despatch as fast as the steamer can deliver," which in substance is just the clause here, and the words which here follow, "any custom of the port to the contrary notwithstanding," obviously make no difference, seeing that no peculiar or exceptional custom of the port of Greenock which could affect the matter one way or other was proved.

The case therefore presents itself to my mind as one in which the consignee was under no absolute and unconditional obligation to take delivery within a specified time, but in which his obligation was limited to taking delivery within a reasonable time so as to allow of the steamer's "quick dispatch," having regard to all the existing circumstances. Again, you have no expression defining the precise time when the ship was to be ready for dispatch. All is left to the rather vague word "quick," which is the more remarkable as the precise date when the vessel was due to sail from Glasgow (6th July) was known as early as 23rd June. She arrived on 27th June, and was berthed in the James Watt Dock, Greenock, the same afternoon. The defender was instructed to be ready to take delivery at 7 a.m. on the morning of the 28th, though why the shipowners if they were so anxious for the utmost promptitude should have made up their minds to sacrifice some working hours on the 27th does not very clearly appear. It rather appears from their agent's letter of 26th June that they had even then resolved to bring down a special force of stevedores from Glasgow, and they brought five gangs of sixteen men each—in all eighty men—who were largely employed in running in the sugar into sheds without taking time to have it weighed. The Sheriff-Substitute is of opinion that this mode of working created confusion and delayed operations on the quay, which I think stands to reason. But he admits that running in sugar into the sheds without weighing it would have saved some time, although he thinks that weighing before shedding is the more natural course both to ascertain the freight and for Customs purposes, and it was not certainly either contrary to custom or to contract, for the shipowners contemplated weighing the sugar as delivered when they wrote the letter of 26th June in which they suggested the providing of a double set of scales at all the hatches. I cannot assent to the view that the shipowner was entitled to prescribe to the consignee either the precise rate or mode of delivery. All that he was entitled to require was that the rate should be reasonably rapid, under the sanction that if it were not so the consignee might incur charges which were "necessary" for the steamer's quick dispatch and charge them against the consignee.

As a matter of fact the ship was discharged, at the rate actually employed, in 36½ hours, which involved no great delay, and the Sheriff, who saw the witnesses, describes the kind of evidence which satisfied him that there was no unreasonable delay on the defender's part. Certainly the pursuers are not entitled to charge against the defender expenses which they intentionally incurred unless they can show that these expenses were "necessary for the steamer's quick dispatch." Therefore I concur in the Sheriff-Substitute's negative finding as to the effect of the proof. I do not find a syllable of evidence to the effect that the vessel was prevented by any delay on the defender's part from sailing on her appointed day, or that she would have been so prevented unless the pursuers had used the extraordinary exertions which they did. How then can it be said that any part of these expenses were "necessarily" incurred for that purpose. The moment you reach the conclusion that the obligation to take delivery "as fast as the steamer can deliver" is not an absolute obligation, and that all the circumstances must be taken into account in order to judge whether the defender has acted reasonably or not, I think it is impossible to lay your finger on any definite failure in fulfilling his obligation to take delivery. If shipowners are desirous to lay new liabilities on charterers or consignees they must be prepared to express these liabilities in what Lord Macnaghten describes as "plain and unambiguous terms." I think they have failed to do so in this bill of lading, and therefore I should be for affirming the judgment appealed from.

The Court pronounced this interlocutor—

"Sustain the appeal: Recal the said interlocutor [of 21st December 1906]: Find that the pursuers have proved that the charges sued for incurred at the time the s.s. 'Crown of Granada' was being discharged were to some extent necessary for the 'steamer's quick dispatch': Therefore ordain the defender to make payment to the pursuers of the sum of £11, 14s. in full of the conclusions of the action, with interest thereon at the rate of £5 per cent. per annum until payment, and decern," &c.

Counsel for the Pursuers (Appellants)—R. S. Horne—Spens. Agent—Hugh Patten, W.S.

Counsel for the Defender (Respondent)—Hunter, K.C.—Sandeman. Agent—W. B. Rainnie, S.S.C.