Thursday, June 15.

FIRST DIVISION.

[Lord Dewar, Ordinary.

WESTOLL *v.* LINDSAY.

Ship—Charter-Party—Demurrage—Clause Excepting Delays Caused by Strikes during the Continuance thereof.

A charter-party stipulated—"If the cargo cannot be discharged by reason of a strike or lock-out of any class of workmen essential to the . . . discharge of the cargo, the days shall not count during the continuance of such strike or lock-out. A strike of the receiver's men only shall not exonerate him from any demurrage for which he may be liable under this charter if by the use of reasonable diligence he could have obtained other suitable labour, and in case of any delay by reason of the before-mentioned causes no claims for damages shall be made by the receivers of the cargo, the owners of the ship, or any other party under this charter."

A strike of dock labourers ended on 18th August, and the ship chartered arrived at the port and was ready to discharge on the 25th. The docks were congested by the strike, and she could not get a discharging berth till 6th September — a Saturday. The lay-days expired on 8th September. The owners claimed demurrage as from 9th September. *Held* that the clause relating to strikes did not apply, and that the charterer was therefore liable in demurrage.

Moor Line, Limited v. *Distillers Company, Limited*, 1912 S.C. 514, 49 S.L.R. 407, *distinguished*.

James Westoll, owner of the s.s. "Gladys Royle," of Sunderland, *pursuer*, brought an action against W. N. Lindsay, grain merchant, Leith, *defender*, for £400 in name of demurrage.

The *facts* of the case appear from the opinion of the Lord Ordinary (DEWAR).

On 17th December 1914 the Lord Ordinary assoilzied the defender from the conclusions of the summons.

Opinion.—"The question in this case is whether a claim for demurrage is precluded by the clause of exemption in a charter-party, where a vessel was unable to obtain access to a discharging berth, and the unloading was consequently delayed, by congestion in the docks following on a strike of dock labourers at Leith. Some evidence has been led, but the facts are really not in dispute. They are contained in a joint minute of admission and are briefly as follows:—In the summer of 1913 there was a prolonged strike of dock labourers at Leith. It began on 26th June, and did not end until 18th August. When it terminated the docks were crowded with vessels awaiting their turn to discharge. The pursuer's vessel, the 'Gladys Royle,' arrived on the 25th August. She carried a consignment of grain for the defender, who was the holder of a bill of lading (which incorporates the charter-party by reference) for part of the cargo, and who for the purposes of this action represents certain other consignees. Although the strike had terminated seven days before the 'Gladys Royle' arrived, the docks were still so congested that she was unable to reach a discharging berth before 6th September. Discharging commenced on Monday, 8th September and was concluded on 18th September.

"By the terms of the contract twenty-one running days were allowed for loading and unloading, and ten days on demurrage, over and above the lay-days, at the rate of £40 per day. Owing to the congestion in the docks, the vessel was not in fact discharged until ten days after the lay-days had expired. The pursuer accordingly claims £400 in respect of this delay. The defence is that the claim is excluded by clause 13 of the charter-party, which is in the following terms, viz.—'If the cargo cannot be (loaded or) discharged by reason of a strike or lock-out of any class of workmen essential to the loading or discharge of the cargo, the days shall not count during the continuance of such strike or lock-out. A strike of the receiver's men only shall not exonerate him from any demurrage for which he may be liable under this charter if by the use of reasonable diligence he could have obtained other suitable labour, and in case of any delay by reason of the before-mentioned causes no claim for damages shall be made by the receivers of the cargo, the owners of the ship, or by any other party under this charter.'

"No question arises under the first part of this clause. It is agreed that the delay did not arise 'during the continuance of the strike.' But the defender maintains that he is protected by the last portion of the clause. This action, he says, is really a claim for damages for delay by reason of the strike, and that such a claim is excluded. And I was referred to the *Leonis Steamship Company, Limited* v. *Rank, Limited* (1908), 13 Commercial Cases, 161 and 295, and *The Moor Line, Limited* v. *Distillers Company, Limited*, 1912 S.C. 514, 49 S.L.R. 407.

"The pursuer on the other hand argued that clause 13 would not bear the construction which the defender seeks to put upon it. In the first place he contended that this was not a claim for damages but for 'demurrage,' that is to say, an agreed payment for the hire of the vessel beyond the period of the lay-days. He admitted, however, that this construction of the word demurrage had been negatived in the *Moor Line* case, and that I am bound to follow that decision. But assuming that a claim for 'demurrage' is covered by the words 'claim for damages' in the clause quoted, the pursuer's counsel went on to argue that the clause excepted only cases of delay occurring during the continuance of the strike. This contention, he said, had not been put forward in the case of the *Moor Line*, and in any event the present case was differentiated from that of the *Moor Line* in respect that the "Zurichmoor" had arrived at the port of discharge during the

existence of the strike, whereas the "Gladys Royle" arrived several days after the strike was over. He further contended that the clause did not cover detention due to failure merely to get a berth, which was the sole cause of delay in this case. In this respect also the case of the *Moor Line* was different, because in it the detention was due to failure to get men and equipment for the purpose of discharge. These two elements had been distinguished in a decision by the Court of Appeal in England in the case of *Marwood* v. *The Central Argentine Railway Company, Limited*, 1915 A.C. 981, where failure to get a berth owing to congestion resulting from a strike was held not to fall within a similar clause of exception.

"With regard to the *Leonis* case, the exemption clause specially provided for the case of 'Obstruction on the railways or in the docks or other places beyond the control of the charterers,' and accordingly it was not a decision which could be founded on in a case where the exception clause contained no such provision.

"I am of opinion that the defender's contention is well founded. I think the *Moor Line* case is directly in point. The two cases appear to me to be indistinguishable. In both the delay had been caused by congestion following on a strike of dock labourers at Leith, and the terms of the exemption clause, upon the construction of which the decision depends, are identical. It is true that in the *Moor Line* case the vessel arrived while the strike was still in progress, but that does not appear to have been regarded as a matter of importance either in the pleadings or the judgment. The case the defender presented was that the vessel was detained, not owing to the continuance of the strike, but owing to congestion following on the termination of the strike. And it was held that the detention due to this congestion was 'delay by reason of' a strike, which excluded claims for damages, and that claims for damages for delay included claims for demurrage. That appears to me to cover the dispute in this case. And so far as I can judge from the report the argument presented in both cases was very much alike.

"The case of *Marwood* v. *The Central Argentine Railway Company, Limited*, has recently been decided in the Court of Appeal, and I was furnished with a copy of the opinions delivered, and referred to certain passages in them which appear to support the pursuer's contention. But the facts upon which the opinions are based are not disclosed, and without a narrative of the facts it is very difficult to understand the case, and the terms of the exemption clause are very different from those used here. I have not therefore been able to derive much assistance from that case. And in any event the *Moor Line* case is, as I have said, directly in point, and it is an authority which I am bound to follow. I accordingly assoilzie the defender from the conclusions of the summons, with expenses."

The pursuer, reclaiming, argued—The charter-party only excluded claims for damages. A claim for demurrage was a claim for a sum payable *ex contractu*, while damages were only due when there was a breach of contract—*Gardiner* v. *Macfarlane, M'Crindell, & Company*, 1889, 16 R. 658, *per* Lord Trayner at p. 660, 26 S.L.R. 492; *Owners of the "Laristan"* v. *Wender & Company*, Shipping and Mercantile Gazette, November 17, 1914; *Nielsen & Company* v. *Wait, James, & Company*, (1885) 16 Q.B.D. 67; *Dunlop & Sons* v. *Balfour, Williamson, & Company*, [1892] 1 Q.B. 507, *per* Atkin, J. *Moor Line, Limited* v. *Distillers Company, Limited*, 1912 S.C. 514, 49 S.L.R. 407, was distinguished, for there the cause of delay was failure to obtain labour, but in any event it was inconsistent with the *Owners of the "Marwood"* v. *Central Argentine Railway Company*, 1915, A.C. 981; consequently the reclaimer's claim was not excluded. (2) But assuming that a claim for demurrage was covered by damages, clause 13 of the charter-party would not protect the respondent, for the cause of delay was failure to get a berth. The "Gladys Royle" was ready to unload some days after the strike had ended, consequently the days, *i.e.*, the lay, demurrage, and following days, began to run as from that date, for clause 13 only suspended the running of the days during a strike. Further, there was no strike of any class of workmen essential to the loading or discharge of the cargo of the "Gladys Royle;" when she was ready to unload these workmen were working. The failure to get a berth was, no doubt, a consequence of the strike, but it was not one of the causes referred to in clause 13. To apply clause 13 to the after effects of a strike was quite unreasonable, and such a construction was negatived in the case of the "*Marwood*" (*cit.*), *per* Lord Parker at p. 985, *per* Lord Sumner at p. 989, and Lord Parmoor at p. 991, which showed that such a clause covered only the direct results of the strike not its after effects. *The Leonis Steamship Company, Limited* v. *Joseph Rank, Limited, No.* 2, 1908, 13 Com. Cas. 161 and 295, was not in point, for the strike clause was in different terms and covered what actually took place, *i.e.*, a railway strike followed by congestion in the dock. In the *Moor Line* case the decision turned upon a strike clause suspending the running of the "days for discharging," *i.e.*, the lay-days and not demurrage days, and was not a decision to the effect that the after consequences of a strike were "by reason" of the strike; if it did so decide, then the decision was in contradiction of the case of the "*Marwood*" (*cit.*), which decided that the after consequences of a strike were not covered by such a clause as the present.

Argued for the respondent—The Lord Ordinary was right. Clause 13 must be construed from the business man's point of view, and in such a light it obviously was intended to cover causes of delay for which neither party was responsible. So regarded it fell into three divisions—(1) the first sentence referred to the days of loading or dis-

charge, or, as suggested by Lord Johnston the days of delay caused by a strike—these days were not to run during the continuance of a strike; (2) next, the effect of a particular kind of strike upon the demurrage days was dealt with; and (3) lastly, the effect of a strike of the kind contemplated in the first and second divisions was applied to the days after the lay and demurrage days. Here the only requisite to bring the clause into operation was that the delay should be by reason of the strikes referred to; there was no limitation of this division to the continuance of the strike. A claim of damages did cover a claim for demurrage—*The Moor Line* case (*cit.*); Scrutton on Charter-Parties, 7th ed. p. 143, and note (*n.*). The case of *Gardiner* (*cit.*) was distinguished, for there the question was, did a claim for demurrage include a claim for damages? The cases of the *Leonis* (*cit.*) and the *Moor Line* (*cit.*) were exactly in point, for there the words "by reason of" were held to include such after effects as in this case. The case of the "*Marwood*" was consistent with the *Moor Line* case (*cit.*), and was distinguished from the present case, for there the question was whether the words "such time" referred to the continuance of the strike (which was not referred to in the contract) or to the period of actual delay, and they were held to refer to the latter.

At advising—

LORD PRESIDENT—A close examination of the *Moor Line* case (1912 S.C. 514, 49 S.L.R. 407) has satisfied me that it did not decide the question raised on this reclaiming note. If the Lord Ordinary did not regard this case as governed by that authority I cannot think that he would have liberated the freighter here from the obligation undertaken in the charter-party, for the facts, which are undisputed, are singularly clear.

The "Gladys Royle" arrived at Leith, laden with a cargo of maize, on the evening of the 25th August 1913, and was ready to discharge on the following morning. That fact was duly intimated to the charterer, who on the arrival of the vessel had at his credit twelve lay-days, the remaining nine stipulated for in the charter-party having been exhausted at the port of loading. The dock was congested. There was no berth available for the ship until the morning of the 8th September, by which time eleven of the twelve lay-days had elapsed, and the ship was confessedly on demurrage on the morning of the 9th. The remainder of the discharge synchronised with the number of demurrage days stipulated for. Accordingly the shipowner raises this action for recovery of the full demurrage money.

Inasmuch as the risk of obtaining a berth is, in the absence of special stipulation to the contrary, on the charterer, the shipowner's case seems plain. But the charterer says that the congestion at the port of Leith was an after effect of a strike among the dock labourers—the men essential to the discharge of the vessel—which came to an end on the 18th August, exactly one week before the ship arrived at Leith. On that date, when the strike terminated, it is admitted that the dock labourers, meters, and porters resumed work in connection with the discharge of vessels, and that work continued thereafter without interruption.

The strike of the dock labourers did not therefore prevent the discharge of the "Gladys Royle," but it did prevent the discharge, and it may be the loading, of other vessels which arrived before her at the port and were berthed before her but later than they otherwise would have been on account of the strike which delayed them. In short, there was a sufficiency of men essential to the discharge at the port but an insufficiency of berths.

In these circumstances is the charterer liberated? He appeals to the 13th clause of the charter-party, which runs as follows—"If the cargo cannot be loaded or discharged by reason of a strike or lock-out of any class of workmen essential to the loading or discharge of the cargo, the days shall not count during the continuance of such strike or lock-out." These words do not appear to me to be susceptible of two interpretations. If the discharge of the vessel was prevented by a strike of men essential to the discharge, then during the continuance of that strike the lay-days at all events do not count. If the lay-days count, then in that case the shipowner necessarily will win and they must count, because it is an admitted fact in the case that during the whole period after the "Gladys Royle" arrived at the port of Leith the men essential to the discharge were at the dock and remained at their work, continuing without interruption. And that is the whole case.

I turn now to the *Moor Line* case (*cit.*) in order to see whether it decides the controversy before us. The 13th clause in the charter-party in that case is in substantially identical terms with the 13th clause of the charter-party before us, but the facts were materially different. When the Moor Line ship arrived at the port of Leith a strike was actually in progress. The strike continued during a period of eight days after the ship's arrival, during which she was unable to discharge. It was common ground that during these eight days the lay-days stipulated for in the charter-party did not count. The charterer had eleven days at his credit when the ship arrived at Leith. When she at length commenced to unload her partial discharge at the port of Leith occupied eight days. She left, therefore, to complete her discharge at the port of Glasgow with three lay-days at credit. The complete discharge at the port of Glasgow occupied seven days. The three lay-days were exhausted, and for four days the vessel was on demurrage. The shipowner under those circumstances claimed four days' demurrage money.

Now the charterers' defence was not that the vessel was unable to obtain a berth—she had obtained a berth—but that in consequence of a strike of dock labourers the loading had been impeded—not prevented—at the port of Leith. His averment was as

follows—"In consequence of the congestion, following on and caused by a strike of dock labourers at Leith, it was impossible to obtain the number of men necessary to work the full number of tackles or to discharge the said cargo at the ship's fullest capacity." That averment was held—and I think rightly held—relevant to be remitted to probation, because the shipowner was claiming these damages for detention. No doubt, it was four days' demurrage money that embraced his claim, but the controversy there was whether or no the claim for demurrage money as distinguished from damages was covered by the strike clause in the charter-party.

If I have correctly recited the facts in the *Moor Line* case (*cit.*), it will be obvious that they have no bearing upon the question raised in this case, and, indeed, in so far as the *Moor Line* case (*cit.*) bears upon the question raised before us, it seems to be an authority in favour of and not against the shipowner's contention, for Lord Salvesen, who delivered the leading judgment in the Second Division, says (p. 519)—"The first part of the clause"—that is the part I have just read—"presents no difficulty. This clause"—the first part—"plainly contemplates a strike occurring before the expiry of the lay-days. If such a strike occurs the running of the lay-days is suspended during its continuance, but when it ceases the lay-days again commence to run."

That is the law which in my judgment is applicable to the present case.

With the other part of the controversy raised in the *Moor Line* case (*cit.*) we have really nothing to do, and I offer no opinion whatever upon the effect of the judgment in the *Moor Line* case (*cit.*). All I say is that it has no relation to the topic in controversy here.

If that be so, then the shipowner's claim is unassailable, for, confessedly, during the period from 26th August until 8th September there was no strike of men essential to the discharge which prevented the ship being discharged. The men were all there, but there was no berth available. That is the charterer's risk and not the shipowner's. Accordingly I am of opinion that he is entitled to have the whole demurrage money, and I propose to your Lordships that we should recal the interlocutor of the Lord Ordinary and grant decree in terms of the conclusion of the summons.

LORD JOHNSTON—The "Gladys Royle" was chartered to load at Sulina and Novorossisk and proceed to Leith, there to discharge. The charterers were allowed twenty-one lay-days and ten days on demurrage at £40 a-day. She took nine days to load, and therefore had twelve lay-days to discharge without incurring demurrage.

These facts are admitted by minute of parties, viz.—The "Gladys Royle" duly arrived in Leith, and notice of readiness to discharge was given on 26th August 1913.

A general strike of dock labourers essential to the discharge of the vessel had begun on 26th June and continued till 18th August 1913. From 2nd July till 18th August a limited amount of discharging at Leith was effected by labour imported by shipowners. But this labour was insufficient, and besides was not generally available. In consequence of the above, at 18th August, when the strike ended and the regular force of dock labour at Leith returned to work, there was great congestion in Leith Docks. Though work continued without interruption from 18th August onward, the effects of the strike, and, *inter alia*, delay in lading and discharging vessels, continued, gradually diminishing in gravity till the end of 1913. On 18th August all berths available for discharging the "Gladys Royle," which was carrying a grain cargo, were occupied by steamers then in course of loading or discharging by the imported labour, and so many were waiting their turn that the "Gladys Royle" only obtained a berth on Saturday, 6th September. She commenced discharging on Monday, 8th September, and finished on 18th September. Accordingly if there is no defence, as she was offered for discharge on 26th August with twelve lay-days left, these had expired on 8th September, and she was on demurrage from 9th to 18th September, or ten days, and the charterers incurred a liability for ten days on demurrage at £40, or £400.

The defence is rested on clause 13 of the charter-party, which is almost in identical terms with that in the case of the *Moor Line*, 1912 S.C. 514, 49 S.L.R. 407, decided in the other Division of the Court.

This clause provides, in the first place, for the case of a strike or lock-out of any class of workmen essential to the loading or discharge of a vessel preventing the loading or discharge. It says that "the days" shall not count during the continuance of the strike or lock-out. If I were required to construe this clause I should say that "the days" means simply the days during which loading or discharging is prevented by the strike or lock-out. These are not to be counted to the lay-days if the lay-days are still running, or to the days allowed on demurrage if the ship is already on demurrage. But the clause is in my opinion of no application here, as the strike at Leith had come to an end eight days before the "Gladys Royle" had reached Leith, and it has no direct bearing on the decision of the present case.

The remainder of the clause is badly drawn. It throws into the same sentence as though connected two things which have no necessary dependence the one on the other. It first provides an exception to the provision already dealt with where the strike is among the receiver's own men. With this also we are not concerned here. But it goes on to add, as if in regard to the exception, "and in case of any delay by reason of the before-mentioned causes, no claim for damages shall be made by the receivers of the cargo, the owners of the ship, or by any other party under this charter." This is really a postscript to the general strike clause and not to the exception, and it is itself a very general provision. It deals not with prevention of but with delay in the loading or discharging by

reason of strike or lock-out. This may cause loss to the receivers of the cargo, not only during the continuance of the strike when loading or discharging is prevented, but conceivably also after the strike is at an end. The receivers are then to stand the loss and to have no claim for damages. This may also cause loss to the owners of the ship. So far as the delay is limited to the period of the strike the matter is already provided for. As the days of strike are not to count to lay-days or demurrage-days no claim can in any view emerge to the owners for such delay, and if this were all the clause in this respect would be surplusage. But though a strike or lock-out may come to an end, further or continuing delay may occur by reason of the strike. If it does there is to be no claim for damages in respect of such delay made by the owners. This "delay" is not necessarily a cut-and-dried thing, as it is while the strike or lock-out is in force when "the days" are not to count. It may be total, and therefore practically the same, or it may be a matter of degree. But when the delay is ascertained no damages are to be claimed in respect of it—neither demurrage if the ship is on demurrage, nor damages if the demurrage-days have run out—for I agree with Lord Salvesen in the *Moor Line* case in regarding demurrage as merely liquidated or pactional damages for detention.

The clause which we have to construe and apply is substantially identified with that involved in the above case of the *Moor Line*, and I think that the judgment, in which I entirely concur up to the point which I have reached, covers the present case, and I have endeavoured so to apply it. The difference between the two cases is that in the *Moor Line* case the strike was current when the vessel arrived in port. In the present case the strike had just come to an end. This difference makes, in my opinion, no distinction.

But then there remains the question, was the delay alleged here "delay by reason of" the strike in the sense of the charter-party? In the *Moor Line* case the alleged cause of delay was twofold:—First, that by reason of congestion caused by the strike it was impossible to obtain the number of men necessary to discharge at the ship's full capacity—that is, as I understand it, that the normal supply of labour was unequal to cope with the abnormal amount of shipping discharging after the strike was ended; second, that owing to the said congestion the supply of railway waggons was insufficient for regular discharge, and delays in lifting them occurred by pressure of the abnormal traffic on the railway. In the case of the *Moor Line* it was accepted by the parties that if the charter-party were construed as the other Division of the Court construed it, a relevant cause of delay had been stated, and Lord Salvesen in giving the leading judgment approved the admission, accepting the *Leonis Steamship Company's* case—*Leonis S.S. Company* v. *Rank*, No. 2 (1908) 13 Com. Cas. 161, 295—as a clear authority in favour of the relevancy.

Now here the delay was alleged to have been occasioned by the congestion caused by the strike preventing the "Gladys Royle" for sundry days after the strike was ended obtaining a berth for discharge. That was just the case of the "Leonis," though the charter-party was somewhat different, and I quite accept it as law that though there was no express term of the charter placing that responsibility on the charterers, the "Gladys Royle" was an arrived ship on reaching Leith, and responsibility for finding a berth rested upon the charterers. On this subject an earlier phase of the *Leonis* case is indeed the leading authority. That does not preclude the charterers being protected by the provision now under consideration. But we were referred to a judgment of the House of Lords—*Marwood* v. *Central Argentine Railway*, [1915] A.C. 981—which would seem to be in conflict and so to overrule the case of *Leonis*, and therefore its application in the *Moor Line* case. Under a charter-party different indeed in its terms but I think very similar in result to that under construction in the *Moor Line* case and in this, it was held that delay arising from inability to secure a berth after a strike had ended gave no claim. It is not easy to make sure whether the judgment did not in the circumstances as proved, or could not as matter of law, give such claim. I think, though with considerable doubt, that I must take it as the latter, and on the ground that the delay was too remote for the alleged cause.

I do so, I say, with hesitation, for as I read the case there is considerable indication that the learned Lords who took part in the judgment in large measure proceeded on proof, or rather want of proof, directly connecting the alleged cause and the consequence; and also because I am unable to distinguish a case where congestion immediately following a strike causes delay in obtaining a berth which in normal circumstances would not have occurred, from one in which similar congestion caused delay in obtaining sufficient labour for discharging which normally would not have occurred. I cannot distinguish between the case of a dozen ships competing for half-a-dozen berths and a dozen ships competing for a labour force only equal to the discharge of one-half their number. Delay in either case seems to me equally attributable to the strike as a direct consequence, and to be covered by the clause in the charter-party in question, if indeed anything in the form of delay after strike ended is so covered, that is, if the judgment in the *Moor Line* case is, as I hold it to be, well founded. But while I express my hesitation, I do not go further, but assuming that I am bound by the judgment in the *Marwood* case, I acquiesce in the result at which your Lordships have, I understand, on different grounds arrived.

LORD MACKENZIE—The "Gladys Royle" arrived at Leith on 25th August 1913. On the 26th she was ready to discharge. There had been a strike at the port, and it is

assumed, as stated in defence, that this was "a general strike of all classes of workmen essential to the discharge of cargoes" at the port. This strike had ceased on 18th August. The strike had therefore ceased before the "Gladys Royle" arrived. The defenders maintain that the lay-days did not begin until the ship was able to get a berth, and that owing to the after effects of the strike this was not until 6th September. The pursuer's case is that the lay-days were running from 26th August. If this view is correct then it is made matter of admission that the ship was on demurrage from the morning of 9th September, the lay-days having expired on the 8th.

The question for decision therefore is, when did the lay-days commence to run? The determination of that question depends upon the true construction of clause 13 of the charter-party. The point is, when did the risk of the charterer commence and when did that of the shipowner end? Do the opening words of the clause apply in the circumstances of this case so as to suspend the running of the lay-days beyond 26th August? Plainly not in my opinion. On 26th August there was no strike of any class of workmen essential to the discharge of the cargo of the "Gladys Royle." There had been a strike of workmen essential to the discharge of the cargo from other ships, and in consequence thereof the cargo from these ships could not be discharged. But the strike had come to an end before the "Gladys Royle" arrived. It is not suggested that any class essential to her discharge were on strike on the 26th. The fact is that she could not discharge because she could not get a berth. This is something quite different from what is stipulated in the charter-party. There is no reason for holding that the lay-days did not commence to run on the 26th. It follows that she was on demurrage from the 9th September. The days which are not to count during the continuance of the strike include at least lay-days and demurrage-days. Lay-days and demurrage-days are to count when the strike is over. The argument for the defender, however, is that the effects of the strike are not limited to the continuance of the strike. This, however, when applied to the facts of the case, would mean that though the meaning of the opening words of the clause is that the demurrage-days are to begin to count from the time the strike ends, yet the payment stipulated for these days is not to be made in consequence of the words at the end of the clause. This would be, in my opinion, to deny to clause 13 its fair meaning taken as a whole. I think the present case may be decided upon the terms of clause 13 without running counter to the decision in the case of the *Moor Line*, 1912 S.C. 514, 49 S.L.R. 407. The clause there was in terms similar to the present except that the expression was "the days for discharging shall not count," &c.; here the expression is "the days shall not count," &c. The principle to which I have given effect is expressly recognised by Lord Salvesen in the following passage of his opinion (p. 519)—"This clause plainly contemplates a strike occurring before the expiry of the lay-days. If such a strike occurs the running of the lay-days is suspended during its continuance, but when it ceases the lay-days again commence to run." So in the present case when the strike is ended there is nothing in the terms of the contract to prevent the lay-days then commencing to run.

I accordingly agree with the conclusion reached by your Lordships.

LORD SKERRINGTON—I do not agree with the reclaimer's counsel that any assistance in the construction of article 13 of this particular charter-party is to be obtained by referring to the legal distinction between demurrage and damages for detention. In charter-parties which impose on the freighter an absolute obligation to discharge the ship within a definite time or with all possible speed, the sum fixed as demurrage may be truly of the nature of liquidate damages for breach of contract. Under the present charter, however, the freighter seems to have had a right to detain the ship during the demurrage days, and accordingly the sum which he has to pay in return for doing so is not damages except in the popular sense in which a stipulated sum of compensation is sometimes referred to even by lawyers under that name. It is difficult, however, to suppose that any ordinary mercantile man would appreciate fine distinctions of this kind, or that a reference to them would be likely to throw light upon the construction of a mercantile document. In my view it is enough for the disposal of the present case that there was no strike of "any class of workmen essential to the loading or discharging of the [chartered] cargo." I cannot hold that the different classes of workmen, such as cranemen, labourers, &c., who had been on strike up to 18th August 1913, were in any way essential to the discharge of the cargo of a ship which did not arrive at Leith until 25th August. I therefore concur in the judgment which your Lordship proposes.

The Court recalled the Lord Ordinary's interlocutor and granted decree in terms of the conclusions of the summons.

Counsel for the Reclaimer—Horne, K.C. — Lippe. Agents — Boyd, Jameson, & Young, W.S.

Counsel for the Respondent—Macmillan, K.C.—C. H. Brown. Agents—Beveridge, Sutherland, & Smith, W.S.