of his income. It is no doubt within the competency of the Legislature to discriminate in favour of land and make the factor for calculation something less than the actual annual benefit. But this would, I think, require to be clearly and expressly provided in order to warrant any discrimination. The construction contended for by the respondent appears to me not to be consistent with the ruling provision that the measure of benefit accruing by the cesser of interest is the measure of liability.

The ambulatory amount of annual rates and the still more ambulatory amount of annual expenditure upon repairs does not appear to me to create serious difficulty. A certain amount of confusion has, I think, been caused by treating the proportional method as if it were a statutory rule and not merely a method of convenience. For the reasons I have stated I think income means beneficial income. Accordingly, what has to be ascertained is the capital value of a beneficial income from land. In my view that is just the capital value of the land from which this benefit could be derived, and in ascertaining the capital value of land the burdens both of rates and of repairs must be taken into account however the valuation is made.

The Court recalled the interlocutor of the Lord Ordinary, sustained the fifth plea-in-law for the pursuer, and remitted to the Lord Ordinary to proceed.

Counsel for the Pursuer—The Lord Advocate (Hon. W. Watson, K.C.)—Skelton. Stair A. Gillon, Solicitor of Inland Revenue.

Counsel for the Defender — Robertson, K.C.—Keith. Agents—Lindsay, Howe, & Company, W.S.

Friday, January 18, 1924.

SECOND DIVISION.

[Lord Morison, Ordinary.

BALLINGALL & SON, LIMITED *v.* DUNDEE ICE AND COLD STORAGE COMPANY, LIMITED.

Contract — Construction — Deposit—Conditions — Liability of Warehouseman at Common Law — Clause in Contract Exempting from Common Law Liability for Negligence — Whether Clause Valid or Ambiguous and Self-contradictory.

A cold storage company received on deposit a quantity of hops from a brewery company, for the storage of which they were entitled to make a charge. The receipt granted by the company, which formed part of the contract of storage, contained the following stipulation :—". . . The company will use every endeavour in taking care of all goods consigned to its charge, but will not be held responsible for any damage whatsoever. If desired, the company will insure against fire, but prefer customers to insure their own goods. All goods are received subject to the conditions on the back of this receipt. *Conditions* — 1. The Dundee Ice and Cold Storage Company, Limited, will use every endeavour in taking care of all goods consigned to its charge, but will not be held responsible for loss or damage to goods stored through maintaining too high or too low a temperature in the stores, failure of machinery, buildings or plant, fire, or any other cause whatsoever other than theft. . . ."

In an action of damages against the storage company for injury to the hops while in the defenders' store owing to their (the defenders') alleged negligence, *held* (*aff.* judgment of the Lord Ordinary, *diss.* the Lord Justice-Clerk (Alness)) that the terms of the receipt exempted the storage company from their liability at common law for the damage done to the hops, and action *dismissed* as irrelevant.

Opinion per the Lord Justice-Clerk that the terms of the receipt were too contradictory to exempt the storage company from their common law liability.

Ballingall & Son, Limited, brewers, Dundee, *pursuers*, brought an action of damages for payment of £1112, 12s. against the Dundee Ice and Cold Storage Company, Limited, *defenders*.

The parties averred, *inter alia*—"(Cond. 2) On 13th May 1921 the pursuers delivered to the defenders 40 pockets of 1919 Belgian hops. Between 21st and 28th May 1921 the pursuers delivered to the defenders 35 pockets of 1919 Kents 'Tolhurst' hops and 2 pockets of 1919 Kents 'Chantler' hops. The foresaid pockets of hops were so delivered to the defenders for storage in their cold stores at Dundee, and were in fact stored by them therein, and the defenders were entitled to make a charge against the pursuers in respect of such storage. All the said pockets were dry and in good order and condition when delivered to the defenders. The receipt and conditions founded on by the defenders in answer are referred to for their terms. *Esto* that the said conditions form part of the contract the defenders were bound to use every endeavour to take care of the hops delivered to them. *Quoad ultra* the defenders' explanations in answer are denied. (*Ans.* 2) Admitted that on the dates specified the said quantities of hops were delivered to the defenders for storage, and were in fact stored by them, and that they were entitled to make a charge against the pursuers in respect of such storage. *Quoad ultra* not known and not admitted. Explained that the hops in question were 1919 hops and they were not put into the defenders' store until May 1921. Explained further that hops have been received for at least ten years by the defenders from the pursuers for storing on the conditions specified in the copy receipt herewith produced. The said conditions were a material part of the contract between the pursuers and defenders and were well known to the pursuers, who received a receipt on each occasion on which they stored hops

with the defenders. Each receipt bore in clear and distinct type the conditions on which the defenders accepted the pursuers' hops. Each receipt bore that the defenders would 'not be held responsible for any damage whatsoever' and that the goods were received 'subject to the conditions on the back of this receipt.' On the back of the receipts are printed the said conditions, No. 1 of which is in the following terms:—'The Dundee Ice and Cold Storage Company, Limited, will use every endeavour in taking care of all goods consigned to its charge, but will not be held responsible for loss or damage to goods stored through maintaining too high or too low a temperature in the stores, failure of machinery, buildings or plant, fire, or any other cause whatsoever other than theft.' Explained that cold storage warehousemen throughout Scotland only contract on similar conditions. They are the usual and customary conditions on which goods are warehoused in Scotland. . . . (Cond. 4) In August 1922 the pursuers withdrew from the defenders' said store 1 pocket of the said 'Tolhurst' hops. The said pocket was found on delivery to the pursuers to be badly damaged by moisture, and in consequence thereof to be musty, decayed, and useless. It was thereafter ascertained and it is the fact that the pockets remaining in the said store, *videlicet*, 27 pockets of 'Tolhurst' hops and 9 pockets of Belgian hops, were likewise damaged by moisture and were in consequence thereof useless. (*Ans.* 4) Admitted that the pursuers withdrew from the defenders' said store 1 pocket of the said 'Tolhurst' hops. *Quoad ultra* denied. (Cond. 5) The cause of the said damage was the defenders' negligent and improper storage of the said hops. The said hops were negligently stored on the top of and in close proximity to ice, from which they had absorbed the moisture which occasioned the said damage. It was well known to the defenders that in order to prevent absorption of moisture hops should not be kept in contact with or in close proximity to ice, and that if hops were stored on or in proximity to ice serious damage would result. . . . (*Ans.* 5) Denied. The hops were stored in the usual place and way. . . ."

The pursuers pleaded, *inter alia*—"1. The pursuers having suffered loss and damage through the negligence of the defenders are entitled to reparation therefor. 2. *Separatim*, the defenders having failed in breach of their contractual obligation to take due care of the hops delivered to them, and the pursuers having thereby suffered loss and damage, the pursuers are entitled to reparation therefor."

The defenders pleaded, *inter alia*—"1. The pursuers' averments being irrelevant and insufficient to support the conclusions of the summons the action should be dismissed."

The form of receipt for storage granted by the defenders to the pursuers is quoted *supra* in rubric.

On 4th July 1923 the Lord Ordinary (MORISON) sustained the first plea-in-law for the defenders and dismissed the action.

Opinion.—"The pursuers in this case are brewers in Dundee. In the year 1922 they deposited certain quantities of hops for care and custody with the defenders, who are a storage company. The deposit was made under a contract which is in writing and is admitted. The pursuers allege that the defenders damaged the goods by placing them negligently on the top of ice then in the defenders' store, and thereby caused loss to the extent of £1100. The ground of the action is the negligent handling of the goods themselves while in the defenders' store.

"I think there is no doubt that at common law the defenders would have been liable for this loss. The obligations of a warehouseman are explained in Bell's Prin., section 155, and may be summarised in two classes, viz.—(1) He must take care of the goods themselves, and (2) he must provide a sufficient storehouse with suitable equipment.

"It is, of course, within the power of parties by special contract to vary or modify or limit the warehouseman's common law obligations.

"The defenders say that they did so. The onus lies on the defenders to establish this. They contend that they did so under the following clause, which it was admitted at the bar is to be taken as part of the contract under which the hops were delivered, viz. —'The Dundee Ice and Cold Storage Company, Limited, will use every endeavour in taking care of all goods consigned to its charge, but will not be held responsible for loss or damage to goods stored through maintaining too high or too low a temperature in the stores, failure of machinery, buildings, or plant, fire, or any other cause whatsoever other than theft.'

"The defenders argued in the first place that the opening words of the clause imposed no obligation on them and expressed only a statement of their intention. I am unable to accept this construction of the words. I think they are words of warranty. In effect they make it a condition of the contract that the defenders shall take reasonable care of the goods. If it were established that the defenders' servant handled the goods negligently, then I think the defenders have not, within the meaning of the clause, used every endeavour to take care of them.

"If the opening words of the clause do import an obligation on the part of the defenders to take reasonable care of the goods, then I think it is possible that according to our law a violation of the duty might justify an order for specific performance. In this case, however, the pursuers seek to impose responsibility upon the defenders for breach of that obligation. They claim damages from the defenders. The rights and obligations of the parties on that subject are regulated by the concluding words of the clause.

"The question is whether a claim for damages arising from mishandling of the goods in the store is admissible or not. The clause says that the defenders are not responsible for damage to goods through

certain enumerated causes, and concludes by adding that they are not responsible for loss 'through any other cause whatsoever' other than theft.

"*Prima facie* the words seem to me to be sufficient to exclude all claims of damages and to import that the defenders accept liability in damages only if the goods are stolen.

"The learned counsel for the pursuers argued that the clause must be construed against the defenders, that it was vague and contradictory and insufficient to absolve the defenders from the ordinary common law obligation imposed upon a warehouseman. They also contended that the operation of the words 'any other cause whatsoever' fell to be restricted by the rule *ejusdem generis*.

"I have carefully considered these contentions and the authorities quoted in the argument.

"In my opinion the words in the clause excepting the defenders from liability for claims of damages are clear and specific. They are intended and designed to confer complete immunity upon the defenders from claims of damages arising in connection with the goods stored, and in my view they are sufficient to carry out this purpose.

"The clause in the first place declares that the defenders are not responsible for loss to goods arising from certain specific and divers causes, which are apparently among the more familiar sources of damage to stored goods, and ends with the most comprehensive words that the contracting parties could use. I feel unable to read the clause except as meaning that the defenders are in no circumstances (except theft) liable in damages.

"Nor do I think the rule *ejusdem generis* helps the pursuers. I understand the rule to be a canon of construction only, and its object is to ascertain the intention of parties, due regard being paid to the nature of the transaction and the language of the contract as a whole.

"And so, after an enumeration of specific words, general words may be restricted to the same *genus* as the specific words which preceded them. But the insuperable difficulty here is in the first place that there is no *genus* in the enumeration from which a limitation can be inferred, and in the second place, even if there were a *genus*, as Lord Robertson points out in the case of *Larson*, 1908 A.C. p. 297, parties insert such words as 'any other cause whatsoever' for the purpose of excluding that rule of construction.

"I shall therefore sustain the first plea-in-law for the defenders and dismiss the action."

The pursuers reclaimed, and argued—The pursuers were entitled to a proof of their averments of negligence. At common law the defenders were liable for the loss—Bell's Principles (10th ed.) section 155, and the language of the clause in question was so vague and contradictory that it could not absolve the defenders from the liability which the common law imposed upon them—*Elderslie Steamship Company* v. *Borthwick*, [1905] A.C. 93; *Nelson Line (Liverpool) Limited* v. *James Nelson & Sons, Limited*, [1908] A.C. 16, *per* Lord Loreburn, L.C. at 18; *Churm* v. *Dalton Main Collieries, Limited* [1916] 1 A.C. 612, *per* Lord Sumner at 648; *Pollock & Company* v. *Macrae*, 1922 S.C. (H.L.) 192, 60 S.L.R. 11; *Ambatielos* v. *Anton Jurgens Margarine Works*, [1923] A.C. 175, *per* Lord Sumner at 188; Leake on Contracts (7th ed.) p. 156.

Argued for the respondents—The pursuers were not entitled to a proof of their averments of negligence. The defenders were absolved from their common law liability in respect of the clause in question which relieved them from all liability except in the case of theft. The language of the clause was not vague and contradictory. The opening words did not import any obligation on the defenders. It was merely a statement of their intentions. The cases cited by the defenders were distinguishable. In *Elderslie Steamship Company* v. *Borthwick*, *cit.*, the Court construed and gave effect to all the clauses—see Earl of Halsbury, L.C. at 96. In *Nelson Line (Liverpool) Limited* v. *James Nelson & Sons, Limited*, *cit.*, effect could not be given to the clauses because they were so contradictory—see Lord Loreburn, L.C., at 19 and Earl of Halsbury at 21. So also in *Churm* v. *Dalton Main Collieries, Limited, cit.*, the clauses were contradictory. In the present case there was no contradiction. *Pollock & Company* v. *Macrae, cit., per* Lord Dunedin at 1922 S.C. (H.L.) 200, 60 S.L.R, 15, was also referred to.

At advising—

LORD JUSTICE-CLERK (ALNESS)—I have the misfortune to differ from the conclusion at which your Lordships have arrived.

This is an action of damages based on negligence. The pursuers, who are brewers, deposited certain goods, viz., hops, in the custody of the defenders, who are a cold storage company. The pursuers' case is that their goods while in the possession of the defenders suffered damage through their negligence and they sue for £1112 as the amount of that damage. The particular negligence with which the defenders are charged is that they placed the hops on the top of and in close proximity to ice in their store. The answer made by the defenders to the claim is a clause contained in the receipt granted by them to the pursuers for the goods. That clause is in these terms—"The Dundee Ice and Cold Storage Company, Limited, will use every endeavour in taking care of all goods consigned to its charge, but will not be held responsible for loss or damage to goods stored through maintaining too high or too low a temperature in the stores, failure of machinery, buildings, or plant, fire, or any other cause whatsoever other than theft." The Lord Ordinary in respect of that clause has held the pursuers' claim to be irrelevant and has dismissed the action. We have to decide whether the conclusion at which the Lord Ordinary has arrived is right. In considering that question it is not unimportant to observe that while the defenders maintain

that it is they do so on grounds other than those on which the Lord Ordinary has proceeded. They have, in point of fact, jettisoned his judgment and have declined to associate themselves with the grounds upon which he has decided in their favour.

The pursuers' claim is based upon the common law. The Lord Ordinary concedes, and the defenders do not dispute, that if the common law applies, there is no answer to the relevancy of the pursuers' claim, *cf.* Bell's Prin. section 155. But the defenders say, and the Lord Ordinary has held, that the clause which I have quoted modifies the common law liability of the defenders. The pursuers on the other hand maintain that the clause is ineffectual to achieve that result. In effect they contend that the clause in the receipt is not worth the paper on which it is written. Why? Because, say they, the document is ambiguous and contradictory and therefore cannot receive effect.

Now the law is not doubtful. "An ambiguous document is no protection" (*cf.* Lord Macnaghten in *Elderslie Steamship Company*, [1905] A.C. 93, at p. 96, followed in *Nelson Line*, [1908] A.C. 16, at p. 20). It is, I think, clear that in a case where there is common law liability, and a clause purporting to modify that liability is relied on, the clause must if clear and unambiguous receive effect. It is, I think, equally clear on the other hand that if the clause is ambiguous or contradictory it is ineffectual and the common law rules. The question we have to decide is within which category the clause in question falls. Have the defenders succeeded by the use of plain and consistent language in contracting themselves out of their common law obligation? That is the question to which we have to supply an answer.

Let us look at the clause and ascertain if we can what it means. For myself I have no doubt as to its meaning. The defenders in effect say—"We will take care of your goods; we will not be negligent, but at the same time we will not be liable for the legal consequences of negligence except in the case of theft." And of course an obligation which lacks a sanction is worthless. It is maintained by the defenders that the first part of the clause is a mere "puff," and that it is without precise or legal significance. I cannot accept that view. I think, on the contrary, that the first part of the clause contains a definite undertaking. It is not in my view the expression of a pious intention; it is a promise—a promise on which an action might be based. If that is not the meaning of the clause, then whatever its intention may have been, its effect in my opinion would inevitably be to mislead the other party to the contract.

The first part of the clause is succeeded by a second part, which is to this effect—"While we have undertaken to take care, we shall not be liable in damages if we do not take care." In other words, there is a promise to do something, coupled with a repudiation of liability for the consequences of failure to implement the promise. What is given with one hand is taken away by the other. A promise is given in one breath; effect is denied to it in the next breath. Such a clause to my mind is not merely ambiguous, it is contradictory, and it therefore cannot receive effect. It resembles the bye-laws in the case of *Churm* ([1916] 1 A.C. 612), of which Lord Sumner says (p. 649)—"By one bye-law they promise wages; by another they try to stipulate that in certain cases they are to be deemed to have promised none, but they do this in halting fashion, which if it does not bear the above interpretation bears no clear interpretation at all."

I will only add that if the defenders' undertaking is of the illusory character which in argument was attributed to it, I do not believe for a moment that the pursuers if they had so understood it would have entered into the contract of storage. If the defenders desire to play the role of storekeepers, and at the same time to relieve themselves of a major part of the obligations which by law attach to that office, they will in my opinion be well advised to frame the clause on which they rely for protection in terms which are consistent and clear, and which, moreover, make its meaning obvious to the other party to the contract — *cf.* Lord Lindley in *Elderslie Steamship Company*, [1905] A.C. 93, at p. 97. They will say plainly in one line what they have obscurely sought to say in six, that they will be liable in damages only in the case of theft. They will not content themselves by hurling at the Court a mere jumble of words. If the defenders have failed to secure the protection which they desired, and which, no doubt, they honestly believed that they had secured, the fault is entirely their own. The sloppy draftsmanship of the clause on which they rely has in my view rendered it impotent to ensure the result which they desire. I therefore think that the Lord Ordinary's judgment should be recalled and a proof allowed.

LORD ORMIDALE—The question for decision is a very short one. It is whether condition 1 is ambiguous and self-contradictory and is therefore of no effect. If it is, then the relevancy of the pursuer's action, which is laid at common law, is not challenged.

Construing the condition as a whole—and I see no reason or warrant for breaking it up into two articles or clauses and subjecting each of these to a minute and searching examination as if in no way related to the other—I read it as meaning this, that "we shall do our best to take care of your goods, but if we fail in our endeavour we are not to be held responsible for any loss or damage thence arising except in the case of goods being stolen." The condition has to my mind the very same meaning as it would have had if the order of the parts of the one sentence of which it is composed were inverted and it had commenced with the words "We will not be held responsible, &c., but we will use every endeavour," and so on. If it were so read I cannot think there would be any dubiety as to its meaning. But taking it as it is and breaking it up into two clauses, the latter clause

appears to me to be at once a competent and clearly expressed excepting clause protecting the defenders in all events but one from any claim for damages. It is only contradictory of what goes before in the sense that all excepting clauses may be said to be contradictory in relation to the contract in which they are found, and to the extent, greater or less, to which they modify or vary the common law rights and liabilities ordinarily resulting from the contract. It is not self-contradictory, and, as I have said, its meaning appears to be free from ambiguity. If that be so, then effect must be given to it. Referring to the cases of *Elderslie Steamship Company* v. *Borthwick* ([1905] A.C. 93) and *Nelson Line (Liverpool), Limited* ([1908] A.C. 16), Lord Macnaghten in *Chartered Bank of India, Australia, and China* ([1909] A.C. 369) says this (at p. 375)—"In addition to the argument relied on in the Courts below, the learned counsel on behalf of the bank prayed in aid two recent decisions of the House of Lords in which the House had occasion to reaffirm and apply the wholesome rule that if a shipowner wishes to relieve himself from liability to the shipper in case his vessel should be found to have been unseaworthy he must say so plainly. That is an old rule. It has never been questioned or doubted. But their Lordships do not recognise any very close analogy between the case where it is sought to get rid of a legal obligation, which is presumed to be the basis of every contract of carriage by sea, and a case like this where the parties are perfectly free to make any stipulation they please, unembarrassed by any implied condition or any original underlying obligation."

The condition was intended to have some effect—as, I think, a modifying effect in relation to the common law rights and liabilities of parties—and should if reasonably possible be given effect to. In my opinion the reclaiming note should be refused.

LORD ANDERSON—The pursuers, as depositors of a quantity of hops in the stores of the defenders, sue the latter in an action of damages for breach of contract. The contract alleged to be broken is that of deposit, under which the defenders as depositaries were entrusted with the custody of the pursuers' hops for safe keeping. The ground of action averred is that the defenders negligently stored the hops in their store by placing them on the top of and in close proximity to ice from which the hops absorbed moisture and so were damaged. At common law the obligations on a depository are (1) to provide a secure place of custody, and (2) to exercise due care to prevent damage or loss in connection with the property deposited (Bell's Prin., section 155). If, therefore, the common law obligations of the contract of deposit applied, it is plain that inquiry into the facts would have to be allowed. But the defence to the action is that the contract of deposit was special, and that it contains conventional stipulations which exclude the claim now made by the pursuers. The defenders, it is maintained, have completely contracted themselves out of their common law obligations. The Lord Ordinary has sustained this defence and dismissed the action.

The contract between the parties is embodied in the receipt for storage granted by the defenders to the pursuers. It is common ground that the hops were deposited by the pursuers and received by the defenders under the terms and conditions of the said receipt. If the receipt has the meaning and legal effect contended for by the defenders the pursuers are undoubtedly out of Court. The important stipulation is that set forth in the first sentence of the receipt which is repeated, with a single modification as to theft and with some elaboration as to possible causes of damage in condition 1. The significant words are those with which the condition concludes, "or any other cause whatsoever other than theft."

The reclaimers' counsel did not submit any contention as to the effect of these general words based on the rule of *ejusdem generis*, and he did not challenge the soundness of the Lord Ordinary's reasoning in the concluding paragraph of his opinion wherein he sets forth the grounds on which he considers such contention untenable. I entirely agree with this part of the Lord Ordinary's opinion.

Any difficulty which the reclaiming note presents is occasioned by the method which the Lord Ordinary has followed in construing condition 1. He has divided the condition into two parts, and has determined the meaning of each part standing by itself and dissevered from the context. This appears to me to be a wrong method of construction. We are not concerned with the meaning of the initial or introductory clause *per se* but of the condition as a whole. It consists of but a single sentence of two clauses, and the question is, What is the meaning of that sentence considered in its entirety? It may be that if the condition had consisted solely of the first clause a general warranty of careful custody would have been imported, but if that clause is read, as it must be, in conjunction with what follows, can it be said that the defenders gave any general warranty? It is plain, I think, that they did not. The condition read as a whole is a negation of warranty save as to theft. It is manifest, in my opinion, that the emphatic and operative part of the condition is the second clause. Read as a whole the condition seems to amount to this—"We intend to do the best we can, but in no event will we be responsible for anything but theft." So expressed the condition is unambiguous, consistent in its parts, and offers no warranty save in so far as theft is concerned. The condition, moreover, embodies a stipulation which the defenders were quite entitled to make. It may be that the first clause imported a promise, but if so, it was conditioned by what is contained in the second clause. This latter clause plainly declares that the sanction of an action of damages is excluded. I know of no reason in law why such a contract should not be entered into. If, then, the pursuers chose

to deposit their goods under a contract which so favoured the defenders they must accept the consequences of having done so.

If the Lord Ordinary's views as to warranty are sound the ensuing difficulties are obvious, and they were clearly indicated by the reclaimers' counsel. If there is the warranty suggested by the Lord Ordinary it follows that there must be a remedy for breach of that warranty, and if the contract gives this warranty and at the same denies a remedy in damages, it may well be held to be self-contradictory and meaningless, thus leaving the parties to their rights at common law. The Lord Ordinary has not met this difficulty by his reference to the possibility of an order for specific performance. The law of Scotland undoubtedly recognises this as a remedy for failure to implement a contract—*Stewart*, (1890) 17 R. (H.L.) 1—but it is only appropriate in certain exceptional cases of which the present does not seem to me to be one. Such a remedy, moreover, is almost invariably accompanied by an alternative crave for damages, it being always discretionary in the Court to declare that the latter is the appropriate remedy—*Moore*, (1881) 9 R. 337, per Lord Shand at p. 351.

The argument of the reclaimer was based on the hypothesis that the Lord Ordinary was right in holding that condition 1 contained the warranty suggested. It was conceded that if this hypothesis was unsound the defence would prevail.

Of the five cases cited by Mr Normand I am satisfied that three have no bearing on the question at issue and afford no aid in the decision of the case. These are *Churm*, [1916] 1 A.C. 612, *Pollock & Company*, 1922 S.C. (H.L.) 192, and *Ambatielos*, [1923] A.C. 175. The other two cases founded on—viz., *Elderslie Steamship Company* ([1905] A.C. 93) and *Nelson Line (Liverpool), Limited* ([1908] A.C. 16)—seem to have a bearing on the point at issue, but their different circumstances make them readily distinguishable from the present case. In the former case there was a general clause of exemption from all damage, which was followed by a second clause which exempted only "if reasonable means have been taken to provide against such defects. . . ." It was held that the second clause qualified the generality of the first clause. In the present case if it be held, as I think it must be, that the initial words of the condition express nothing more than an intention and do not import a warranty, there is no inconsistency between the two clauses of the condition calling for reconciliation or qualification. In the case of *Nelson Line (Liverpool), Limited*, the agreement as to limitation of liability was described by the Lord Chancellor (Loreburn) (at p. 19) as "so ill thought out and expressed that it is not possible to feel sure what the parties intended to stipulate." The result was that the agreement was jettisoned and the rights and obligations of parties determined by the common law. The reclaimers invited us to tear up the contract under which the hops were deposited and allow the common law to determine the rights and obligations of parties. This is an extreme step which can only be taken if the conventional agreement is meaningless and unintelligible. In my opinion the meaning of the contract is not doubtful, and this being so it must be given effect to.

The result is that I reach the same conclusion as the Lord Ordinary although by a different route. I am therefore of opinion that the reclaiming note should be refused and the interlocutor of the Lord Ordinary affirmed.

LORD HUNTER was absent.

The Court refused the reclaiming note and adhered to the interlocutor reclaimed against.

Counsel for the Reclaimers (Pursuers)—Dean of Faculty (Sandeman, K.C.)—Normand. Agents—Gordon, Falconer, & Fairweather, W.S.

Counsel for the Respondents (Defenders)—Wark, K.C.—Macgregor Mitchell. Agents—Kirk Mackie & Elliot, S.S.C.

Saturday, January 26.

SECOND DIVISION.

DUKE OF BUCCLEUCH AND QUEENSBERRY AND ANOTHER (TRUSTEES OF ROSYTH ROYAL NAVAL DEPOT CANADIAN FUND), AND THE ADMIRALTY, PETITIONERS.

Charitable Trust—Nobile Officium—Trust Unworkable for Lack of Effective Machinery—Transfer of Trust Funds—Discharge of Trustees.

Owing to change of circumstances a charitable trust became unworkable for lack of effective machinery. In a petition by the trustees to authorise the petitioners to transfer the trust funds to another charitable trust, the purposes of which were similar, and on the trust funds being transferred to declare the trust at an end and to grant a discharge to the petitioners, the Court *authorised* the transfer proposed, and with reference to the application for discharge *remitted* the petitioners' accounts and vouchers to the Accountant of Court for examination, audit, and report prior to granting discharge.

(1) The Most Noble John Charles Montagu Douglas Scott, Knight of the Thistle, Duke of Buccleuch and Queensberry, and the Honourable Sir George Halsey Perley, K.C.M.G., formerly High Commissioner in London for the Dominion of Canada, 19 Victoria Street, Westminster, London, now residing in Ottawa, Canada, the surviving trustees acting under the declaration of trust after mentioned; and (2) the Commissioners for Executing the Office of Lord High Admiral of the United Kingdom of Great Britain and Ireland, presented a petition to the Court for authority to transfer certain funds to a trust therein