HOUSE OF LORDS.

Monday, July 29, 1907.

(Before the Lord Chancellor (Loreburn), Lords James of Hereford, Atkinson, and Collins.)

BOARD OF TRADE *v.* BAXTER AND ANOTHER, "THE SCARSDALE."

(On Appeal from the Court of Appeal in England.)

Ship — Voyage — Wages — Agreement — End of Voyage — Election by Master — Merchant Shipping Act 1894 (57 *and* 58 *Vict. c.* 60), *sec.* 114, *sub-sec.* 2 (*a*), *sec.* 115, *sub-sec.* 5.

A fireman signed articles of agreement for a "voyage not exceeding one year's duration to any ports or places within the limit of 75 degrees north and 60 degrees south latitude, commencing at Cardiff, proceeding thence to Malta, thereafter trading to ports in any rotation, and to end at such port in the United Kingdom or Continent of Europe, within home trading limits, as may be required by the master."

The vessel proceeded to Malta, the Black Sea, and thence back to Southampton, where she unloaded her cargo, and where the fireman claimed his discharge. The master refused, and required him to go on with the ship to Cardiff. *Held* that the master was justified (in view of the agreement, which in no way contravened sec. 11 of the Merchant Shipping Act 1894) in his refusal, it being within his power to determine (within certain limits, including Cardiff), the port at which the voyage should terminate, and the discharge of the cargo at Southampton not being equivalent to the termination of the voyage.

Appeal from a judgment of the Court of Appeal (Vaughan Williams, Stirling, and Moulton, L.JJ.) (1906), P. 103, reversing a decision of Bargreave Deane, J.

The facts are fully stated in the considered judgments of the Lord Chancellor and Lord Collins.

Lord Chancellor (Loreburn) — The question in this case is whether or not Charles Baxter, a fireman who served in the steamship "Scarsdale," is entitled to the sum of £4, 3s. 9d., being the balance of his wages, and also a sum of £2 for compensation. A summons was taken out under section 164 of the Merchant Shipping Act 1894. The magistrates found the facts, but made no order, and referred the case to the Admiralty Court, under section 165, sub-section 3, of the Merchant Shipping Act 1894. Baxter claimed his discharge at Southampton when the "Scarsdale" arrived there on the 28th September 1904. He was engaged on the following terms: That he was to serve "on a voyage not exceeding one year's duration to any ports or places within the limits of 75 degrees north latitude and 60 degrees south latitude, commencing at Cardiff, proceeding thence to Malta, thereafter trading to ports in any rotation, and to end at such port in the United Kingdom or Continent of Europe (within home-trading limits) as may be required by the master." The "Scarsdale" proceeded to Malta, thence to the Black Sea, where she took in grain, and thence to Southampton, where she arrived on 28th September. The ship there discharged the whole of her cargo, and Baxter claimed his discharge. The master of the "Scarsdale" told him that he would have to go on to Cardiff. He said nothing further, and it is obviously consistent with the master's attitude at the time, as it is with the argument urged before your Lordships, that the real claim on behalf of the shipowners was that Baxter should serve in a succession of voyages, not exceeding in all one year's duration, until the master should think fit to fix upon a particular port as the end of the service. Bargrave Dean, J., decided in favour of the plaintiff, but the Court of Appeal reversed his opinion, and your Lordships now have to decide the question finally. I ask myself first, What is the meaning of this agreement? It is an agreement for one voyage, not for two or more voyages, and it is an agreement for one year and no longer. If, therefore, any one voyage comes to an end before the expiration of the year, the service is also ended. It is true that the master may choose at what port in the United Kingdom or within home-trading limits, the voyage is to end, but that does not mean that he can prevent a voyage from ending when in fact it has ended. It means that he is the person who has to fix upon the port where the voyage is to end, but if he fixes upon a port where in fact the voyage does end, although he may not intend that the voyage shall end there, the voyage is none the less ended at that port. I turn now to the Merchant Shipping Act 1894, and consider the meaning of its provisions in regard to voyages. It seems to me that under the Act a seaman may agree for a voyage no matter how long it may last in point of time, provided it is in fact one voyage. A seaman may also agree for two or more voyages (called a running agreement) provided that the service shall in that case end within a short fixed period—namely, the 30th June or the 31st December next following, "or the first arrival of the ship at her port of destination in the United Kingdom after that date, or the discharge of cargo consequent on that arrival." Accordingly, it will be observed that the nature of any authorised agreement hinges upon the meaning of the word "voyage," and yet the Act gives no definition of that word, because it does not admit of definition. There is an indication and no more. The Legislature apparently attaches importance to the arrival of a ship at her port of destination in the United Kingdom, and the discharge of her cargo there. It must in each case be a question of fact what is a voyage, and in ascertaining what it is a court may regard the

following among other considerations: The duration of the adventure in point of time, and its unity; its geographical limits and direction; whether new cargoes are shipped, or new charters made, or ports visited in orderly succession, and in particular whether there has been a sailing from and afterwards a return to the United Kingdom. Coming back to the United Kingdom in the case of a British ship is not quite the same thing as returning to another port. It is in the nature of a home-coming, and where followed by a complete discharge of cargo it does in a considerable degree denote the termination of a voyage. If, looking at what is done as a matter of business, the Court perceives that there is a series of several adventures and not one adventure divided in several stages, then it is not one voyage, but two or more voyages, and the agreement must be a running agreement with its limitations of time attached. It is not lawful to escape the limitations attaching to a running agreement by calling something a voyage which in point of fact is not a single voyage. Looking at the facts here, there is ground for saying that the arrival at Southampton ended a voyage, and if a voyage, then the voyage for which this man engaged, seeing that he engaged only for one. If the master had designated Cardiff as the end of the voyage, he was entitled to do this in order that he might take his ship in ballast from Southampton to Cardiff, which was the port where the crew were engaged. Whether he did so or not is a question of fact upon which I am not prepared to dissent. I think it clear that the master could not under these articles have required the men to continue their service after arrival at Cardiff. I am of opinion that the judgment of the Court of Appeal should be affirmed.

LORD JAMES OF HEREFORD—The facts of the case and the course of procedure have been so fully stated by the Lord Chancellor that I need not go through them again. The question then raised and now to be determined is—Did the voyage, under the above circumstances, terminate at Southampton, or was the master within his rights in requiring it to be continued to Cardiff? The contention that the voyage ended at Southampton seems to be based upon the view that the fact of the cargo on board the "Scarsdale" being wholly discharged at Southampton necessarily brought the voyage to an end. In my opinion this contention is untenable. Looking at the terms of the articles, the voyage is to terminate at such port within the United Kingdom as the master may require. Nothing is said about the cargo or its delivery. The voyage is that of the ship, and not of the cargo. No doubt the Act of 1894 contains provisions framed for the purpose of protecting seamen when entering into these shipping contracts, and I think that your Lordships ought to look jealously to see that those protections are not evaded. In these articles the limit of the voyage to one year is a substantial protection. The counsel for the Board of Trade argued, that whilst the vessel might load at several different foreign ports, it could not, after delivery of a cargo within home trade limits, continue the voyage. But I see nothing in the agreement to support this contention. It seems strained and artificial, and cannot be supported unless, as Sir Robert Finlay admitted, words by implication were read into the articles. I gather that this admission was made from the judgment of Moulton, L.J. I cannot see any hardship or injustice that can be caused by accepting the agreement in its natural sense. It was urged that if the respondents' view were correct, a series of voyages might be undertaken whilst only one was contemplated. Your Lordships need not when determining this case enter upon such consideration. It is enough to deal with the existing facts. The captain, after delivery of the cargo, desired to intimate that the end of the voyage was Cardiff. No further venture was undertaken. I desire to add that the question involved in this case must be regarded as one of fact rather than of law. Very good reasons might exist for wishing to bring the vessel home to the port from which it commenced the voyage, and great inconvenience might arise from having to secure a fresh crew at Southampton. It was said that runners could always be obtained to work a vessel. To employ such crews on board a steamship might be inconvenient if not hazardous. I therefore think that the judgment of the Court of Appeal is correct and should be affirmed.

LORD ATKINSON—I concur substantially in the result at which your Lordships have arrived. It was contended in the argument on behalf of the Board of Trade that the Merchant Shipping Act 1894 only permitted two forms of agreement, namely, agreements for a voyage and running agreements. I think that the provisions of section 127 make that absolutely clear, and that the contention was right. It is impossible to define affirmatively what a "voyage" is. I think that it is a question which must depend in each case upon the particular facts of that case, but it may be possible to approach a negative definition of it by saying that at all events it must be one enterprise. I think that it would not have been permissible for the master of the ship under articles such as these to have left a home port, to have traded from a foreign port to a foreign port, to have returned to a home port and there discharged his cargo, and started afresh upon a new journey to some other foreign port. I think that to do so would have been an abuse of the power conferred upon him of designating the port at which the voyage was to end. Neither do I think that it would have been competent to him under these articles to have added, as it is said, a home coast trading supplement to the foreign voyage. I am far from saying that the final port of discharge is necessarily the end of the voyage, or that it

would not have been competent for the master under these agreements to have designated Cardiff as the end of the voyage. My difficulty in this case—for I have a difficulty—is caused by this, that I am entirely unable to find in the evidence of the master any indication that he named the port of Cardiff as the termination of the voyage, or any indication of the purpose for which he desired to go to the port of Cardiff. It would have been absolutely consistent with his evidence, in my view of it, that when arrived at Cardiff he desired to start upon a new foreign voyage or on a coast trade cruise. I own that the inclination of my opinion would have been, in the absence of all evidence of that character, to hold that the port to which he took a cargo, to which he navigated the ship upon a voyage on which he required the crew to serve, and at which he finally discharged his cargo, would *prima facie* be taken to be the port which he designated as that at which the voyage should end. But that is a matter of fact upon which different views may be entertained, and I am not so confident of my own opinion as to induce me to differ from your Lordships.

LORD COLLINS—The agreement with the plaintiff in this case, which is in a form approved by the Board of Trade, purports to be "for a voyage not exceeding one year's duration to any ports or places within the limits of 75 degrees N. and 60 degrees S. latitude, commencing at Cardiff, proceeding thence to Malta, or any other ports within the above-mentioned limits, trading in any rotation, and to end at such port in the United Kingdom or Continent of Europe (within home trade limits) as may be required by the master." Now, it is not disputed that the master did in point of fact require the voyage of the ship to end elsewhere than at Southampton, the port where the plaintiff claimed his wages, on the footing that the voyage had ended there. Unless therefore he can get rid of the express provision of the agreement making the requirement of the master a condition-precedent to the end of the voyage, he was never in a position to demand his wages, and the judgment of the Court of Appeal is right. But the point made for the appellant is that inasmuch as Southampton, where the ship had arrived, was the port of final discharge of the cargo, the provision in the agreement enabling the master to fix another destination for the ship and crew as the end of the voyage is illegal, and must either be struck out of the agreement as separable, leaving the rest of the agreement standing, or that the whole agreement must be treated as illegal, leaving a claim to the plaintiff as on a *quantum meruit* for work done. The facts which raise the question are so very short that to avoid any misapprehension as to what is the point of law involved in the case I will read them as they are stated in the record. Patrick Murphy says—"I signed on board the British ship 'Scarsdale' at Cardiff on the 5th August 1904 as fireman. I proceeded in that vessel to Malta, then to the Black Sea, where we took in grain, and then to Southampton, where we arrived on the 28th September last. The ship then discharged the whole of the cargo. The defendant is the master of the said ship. The sum of £3, 19s. is due to me for wages as fireman on board the said ship, . . . at Southampton I claimed my discharge. On the day the ship arrived at Southampton I went to the captain. I said to him—'I would like my discharge. He said—"Go and see the shipping-master." The reason I asked for my discharge was because the cargo was discharged, and I thought that Southampton was the final port of discharge, and that I had completed my agreement under the articles. Defendant said—"The agreement is not at an end." I went to the shipping-master, and afterwards took out this." Cross-examined — "The defendant would not give me my discharge. He told me I should have to go to Cardiff." That is the plaintiff's story in examination and cross-examination. Then comes the master, who says — "Southampton was the final port of discharge for the cargo." The justices then formulate the issue referred to the Admiralty Court. It is the only one that is raised for discussion in this case. "As both sides admitted that the question was a most important matter in the interest of the shipping world, we, the undersigned parties, decided to refer the claims to the Admiralty Division of the High Court, such claims depending upon whether the plaintiffs were entitled to their discharge under the said articles at Southampton or at Cardiff, under section 165, sub-section 3, of the Merchant Shipping Act 1894, and the said claims are referred accordingly." The question therefore is between Southampton and Cardiff, not with a view to any possible destination of the ship after Cardiff; that is out of the question on the facts. Accordingly this is the issue with which Bargrave Deane, J., purports to deal. The Court of Appeal properly addressed themselves to the same issue; and this case must, I think, be dealt with on the footing that if the voyage was not intended to end at Southampton it was ended at Cardiff. Bargrave Deane, J., says—"Upon this statement of facts the question of law arose, whether the voyage and agreement of the plaintiff with the master terminated at Southampton or Cardiff"; and in deciding the case he says—"I find that it is an agreement within the meaning of section 114, sub-section 2 (*a*), and section 115, sub-sec. 5, that the master by accepting a charter for a cargo from the Black Sea to Southampton, exercised his power of ending the voyage at Southampton, a port in the United Kingdom, as his 'final port of discharge,' making it thereby 'his final port of destination,' and that having so exercised his power he had no right to require the plaintiff to proceed further with the ship, and the plaintiff was entitled to his discharge and his wages at Southampton." The root of the matter therefore would seem to be whether it was illegal to leave it

in the discretion of the master to name within the agreed limits where the voyage of the ship was to end. It is obvious that there might be excellent business reasons which might make it desirable for the owners to secure the services of the crew to take the ship on to another port than that at which she had delivered her last cargo. For instance, she might have delivered her last cargo at a continental port within home trade limits, and the owners might well desire to have her back in the United Kingdom, and to have the services of the same crew to take her back, instead of trusting to haphazard selection at the port where she happened to have delivered her cargo. What would be more reasonable, therefore, *prima facie*, than a stipulation securing the possibility of effecting this purpose? But on the argument for the appellant such a stipulation would be illegal, and the voyage would be deemed to have ended at the continental port. I cannot find any foundation in the Merchant Shipping Act for such a contention. The policy of that Act, as pointed out by counsel for the respondents, seems to be to frame certain carefully considered rules to protect the rights of sailors in their agreements, but, within those rules, to leave them freedom of contract, ample security being taken that the terms of their contracts should be fully explained to them. Section 114 of the Merchant Shipping Act 1894, which is the most material provision, provides, by sub-sec. 1—"That an agreement with the crew shall be in a form approved by the Board of Trade"; and by sub-sec. 2—"The agreement with the crew shall contain as terms thereof the following particulars: Either the nature, and, as far as practicable, the duration of the intended voyage or engagement, or the maximum period of the voyage or engagement, and the places and ports of the world, if any, to which the voyage or engagement is not to extend." There is no provision more stringent than this, and unless the agreement in question is prohibited by it it cannot be impeached. Now, it is not disputed that the adventure contemplated by this agreement is properly described as a voyage—see per Bargrave Deane, J., Vaughan Williams and Stirling, L.JJ.—though it covers many distinct subordinate adventures involving the discharging and receiving of cargoes at many different ports "trading in any rotation." The maximum period, namely, one year, is named, and the places or ports of the world to which the voyage or engagement is not to extend are defined. Nor was exception taken to the provision giving discretion to the master to name the port within home trade limits at which the voyage—treating the word as concerned with the transit and delivery of the cargo only—was to end. How then was the suggested element of illegality introduced into the discussion? With the greatest deference to the eminent counsel who argued for the appellant, be it said, simply by begging the question. On the assumption that the voyage ended at the port where the last cargo was delivered, a provision that the master might order the ship on to a fresh destination might involve the commencement of a new voyage, and possibly sin against the statute; but if the voyage did not end till the ship had reached her destination at the home port required by the master, there is nothing upon which to found an imputation of illegality. I agree with the contention of counsel for the respondents, which was adopted by the Court of Appeal, that the voyage contemplated for the cargo need not be co-extensive with that contemplated for the ship, though it very often is so. I think that it is very much to be deprecated that the Court should be subtle to find implications of illegality, having the effect of hampering freedom of contract in business matters, where no express prohibition can be found. In my opinion, the contention of the respondents involves no illegality, and the voyage did not end at Southampton. I think that the result of the appellant's contention would be most unreasonable, and such as I cannot suppose the Legislature to have contemplated. Another argument much relied on for the appellant was, if I rightly understood it, that, apart from the illegality of leaving a discretion to the master to name the port at which the voyage was to end, the contract, rightly construed, excluded any further stage in the voyage after Southampton, since all ports within home trade limits, were excluded from the ports which she might visit "trading in any rotation." Thus her last cargo, on this contention, would have had to be shipped from some port other than one within home trade limits, if she was to come home otherwise than in ballast, and the possibility of delivering a cargo shipped in the Black Sea at a port within home trade limits, and thence carrying on another for delivery at another port within home trade limits, say in the United Kingdom, was excluded. This appears to me to be quite an arbitrary construction, and one which the contract certainly does not provide for in express terms; on the contrary, it involves a limitation, for which I can see no reason, on the ordinary meaning of the words used. The limits in which the ports must lie to which she may proceed after starting from Cardiff at the commencement of the voyage cover the whole home trade area as well as a great deal more, and there is therefore express permission to visit ports, trading in any rotation within the smaller as well as the larger area. I think that the appellant's contention on this point fails.

Appeal dismissed.

Counsel for the Appellants—Solicitor-General (Sir W. Robson, K.C.), Sir R. Finlay, K.C., and Rowlatt (Sir J. Lawson Walton, K.C., Attorney-General, with them). Agent — The Solicitor to the Board of Trade.

Counsel for the Respondents — J. A. Hamilton, K.C. — Lewis Noad. Agents—Botterell & Roche, Solicitors.