HOUSE OF LORDS.

Thursday, November 21, 1907.

(Before the Lord Chancellor (Loreburn), the Earl of Halsbury, Lords Macnaghten and Atkinson.)

NELSON LINE, LIMITED *v.* JAMES NELSON & SONS, LIMITED.

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

Ship—Duty of Shipowners to Provide Seaworthy Ship—Damaged Cargo—Effect of Ambiguous Clause of Exception.

The law imposes on shipowners, in a question with those to whom they charter their vessels, a general duty of providing a seaworthy ship, and of using reasonable care in everything which pertains to her. They may, it is true, contract themselves out of those duties, but the contract must be a clear one—"an ambiguous document is no protection." Terms of a document which were *held* too ambiguous to relieve shipowners of their duty to provide a ship fit to carry her cargo.

Appeal from a judgment of the Court of Appeal (Collins, M.R., Cozens-Hardy and Moulton, L.JJ.), reported (1907) 1 K.B. 769, affirming a judgment of Bray, J., at the trial before him with a jury.

The facts sufficiently appear from the judgment of the Lord Chancellor (Loreburn) *infra.*

The material clauses of the contract were the following:—Clause 10 — "The owners are not to be liable for any loss, damage, prejudice, or delay wherever or whenever occurring caused by the act of God, the King's enemies, pirates, robbers, thieves, whether on board or not, by land or sea, and whether in the employ of the owners or not, barratry of masters or mariners, adverse claims, restraint of princes, rulers, and people, strikes, or lock-outs, or labour disturbances or hindrances, whether afloat or ashore, or from any of the following perils, viz., insufficiency of wrappers, rust, vermin, breakage, evaporation, decay, sweating, explosion, heat, fire, before or after loading in the ship or after discharge, and at any time or place whatever, bursting of boilers, nor for unseaworthiness or unfitness at any time of loading or of commencing or of resuming the voyage or otherwise, and whether arising from breakage of shafts or any latent defect in hull, boilers, machinery, equipment, or appurtenances, refrigerating or electric engines or machinery, or in the chambers or any part thereof, or their insulation or any of their appurtenances, or from the consequences of any damage or injury thereto, however such damage or injury be caused, provided all reasonable means have been taken to provide against unseaworthiness, collision, stranding, jettison, or other perils of the sea, rivers, or navigation of whatever nature or kind, and howsoever such collision, stranding, or other perils may be caused, and the owners not being liable for any damage or detriment to the goods which is capable of being covered by insurance, or has been wholly or in part paid by insurance, nor for any claim of which written notice has not been given to the owners within forty-eight hours after date of final discharge of the steamer. The above-mentioned exceptions shall apply whether the same be directly or indirectly caused or shall arise by reason of any act, neglect, or default of the stevedores, master, mariners, pilots, engineers, refrigerating engineers, tug-boats or their crews, or other persons of whatsoever description or employment, and whether employed ashore, on board, or otherwise, for whose acts or defaults the owners would in anywise in connection with the execution of this charter otherwise be responsible. . . ."

Clause 18 contained the words—"The protection given by this article to the owners is intended to be in addition to that given by art. 10, but is subject to the proviso as to taking means to prevent unseaworthiness therein contained."

Lord Chancellor (Loreburn) — The plaintiffs shipped a cargo of meat on the defendants' vessel under an agreement of the 18th June 1904. The cargo was lost by reason of the vessel's unseaworthiness, which was due to the defendants' negligence, and in this action the sole question is, whether or not they are freed from liability by certain words in the agreement. If the words are considered by themselves they seem to excuse the shipowners not merely from this but from any imaginable liability except such as by law cannot be underwritten. They run as follows:—"The owners not being liable for any damage or detriment to the goods which is capable of being covered by insurance, or has been wholly or in part paid for by insurance." But the whole agreement must be regarded, and especially the context of the clause in which this alleged exemption occurs. The words in question do not stand by themselves; they are at the end of a very long sentence, the earlier part of which is wholly without effect if the last part means what the defendants maintain. Beyond that there are two potent considerations weighing heavily against the defendants. One is that in this clause the words in dispute are preceded by an express provision dealing with the very subject of unseaworthiness and negligence, which would be flatly contradicted and overruled by the defendants' interpretation, and yet there follows immediately another sentence which assumes that this express provision is still operative. The other consideration is that in the 18th clause, which is a later clause, the language is again used which shows that the parties supposed this same express provision still to be operative, whereas on the defendants' construction it had ceased to have any effect. I am aware that on the alternative interpretation there would also be

some redundancy in this agreement, but there would not be irreconcilable stipulations in one and the same clause. If I were obliged to fix a definite meaning to the disputed language I should prefer the plaintiffs' construction. But in truth I think that the clause taken as a whole is so ill thought out and expressed that it is not possible to feel sure what the parties intended to stipulate. The law imposes on shipowners the duty of providing a seaworthy ship and of using reasonable care. They may contract themselves out of those duties, but unless they prove such a contract the duties remain, and such a contract is not proved by producing language which may mean that and may mean something different. As Lord Macnaghten said in the case of *Elderslie Steamship Company* v. *Borthwick*, (1905) A.C. 93, "an ambiguous document is no protection." That is the ground on which I rest my opinion. I wish to say, with the utmost respect for Mr Scrutton's arguments, that I cannot agree with him in what I think was his contention, that there is a canon of construction by which the rigour of interpretation in some commercial documents must be proportioned to the importance of the stipulation to be construed. I know of only one standard of construction, except where words have acquired a special conventional meaning, namely, what do the words mean on a fair reading having regard to the whole document? I am afraid that it is useless to draw the attention of commercial men to the risks which they run by using confused and perplexing language in their business documents. Courts of law have no duty except to construe them when a question is raised, but it is often very difficult. And sometimes what the parties really intended fails to be carried out, because ill-considered expressions find their way into a contract.

EARL OF HALSBURY—I am entirely of the same opinion. The only observation which I wish to make is in reference to the language used by commercial men. Lord Blackburn used to say that the difference between commercial men and lawyers was that commercial men wished to write their documents short and lawyers to write them long. But a mixture of the two renders the whole thing unintelligible. I can understand cases where the documents of commercial men acquire a particular meaning, and the Courts will give effect to the common interpretation of such words. But here is a document where apparently the draughtsman has put every conceivable hypothesis into it. He was not content to put in a protective clause which might have had an effect. He has gone on as if he were a lawyer to endeavour to make the document as long as possible, and to deal with every part of the subject-matter. Not unnaturally that sort of composition leads to the document contradicting itself. In one part it is said that the defendants should not be liable at all, and in another that they should be liable under certain circumstances. How is it possible for any Court to give a construction to such a document? The result is that the draughtsman has only jumbled together a number of phrases to which no legal interpretation can be given, so that in the result the legal liability remains.

LORD MACNAGHTEN—I concur.

LORD ATKINSON—I also agree with my noble and learned friend on the Woolsack.

Appeal dismissed.

Counsel for the Appellants—J. A. Hamilton, K.C. — Bailhache. Agents — Rawle, Johnstone, & Co., Solicitors.

Counsel for the Respondents—R. Isaacs, K.C.—Scrutton, K.C.—Atkin, K.C. Agents —Parker, Garrett, Holman, & Howden, Solicitors.

HOUSE OF LORDS.

Wednesday, November 27, 1907.

(Before the Lord Chancellor (Loreburn), the Earl of Halsbury, Lords Ashbourne, Macnaghten, James of Hereford, and Atkinson.)

INLAND REVENUE *v.* MAPLE & COMPANY (PARIS), LIMITED.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Revenue—Stamp Duty—"Conveyance on Sale"—French Property—French Deed—Consideration Payable in England — Stamp Act 1891 (54 *and* 55 *Vict. cap.* 39), *sec.* 54.

One English company transferred to another English company certain property in France by a deed of "apport" executed in France according to the formalities of French law, the price of the property being payable in shares of the purchasing company.

Held that the deed was a "conveyance on sale" within the meaning of section 54 of the Stamp Act 1891, and as such chargeable with stamp duty.

Appeal from a judgment of the Court of Appeal (MOULTON and FARWELL, L.JJ., COLLINS, M.R., dissenting), reported (1906) 2 K.B. 834, affirming a judgment of WALTON, J., upon a case stated by the Commissioners of Inland Revenue.

The question was whether a certain instrument was chargeable with stamp duty as a conveyance on sale under the provisions of the Stamp Act 1891 (54 and 55 Vict. cap. 39).

Section 54 of that Act is—"For the purposes of this Act the expression 'conveyance on sale' includes every instrument and every decree or order of any court or of any commissioners whereby any property or any estate or interest in any property upon the sale thereof is trans-